

106TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
106-147

SUMMARY OF LEGISLATIVE  
AND OVERSIGHT ACTIVITIES  
DURING THE 105TH CONGRESS

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R E P O R T

OF THE

COMMITTEE ON SMALL BUSINESS  
UNITED STATES SENATE



AUGUST 27, 1999.—Ordered to be printed  
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Mr. BOND, from the Committee on Small Business,  
submitted the following

REPORT

**I. SUMMARY OF COMMITTEE ACTIVITY FOR THE 105TH  
CONGRESS**

**A. REGULATORY FAIRNESS: OVERSIGHT AND IMPLEMENTATION OF  
THE RED TAPE REDUCTION ACT**

Regulatory reform for small business continued to be a priority for the Committee during the 105th Congress. The Committee paid especially close attention to implementation of the Small Business Regulatory Enforcement Fairness Act of 1996, which provided small businesses with new tools to reduce red tape and participate meaningfully in the rulemaking process.

As the principal author of this new law, Chairman Christopher S. “Kit” Bond wanted to ensure that Federal agencies properly and fully implemented its requirements. He sought to ensure that the letter and spirit of the law were being followed. Witnesses at the Committee’s hearing on “Small Business Perspectives on Mandates, Paperwork, and Regulation” testified to the importance of regulatory reforms to small business and oversight of agency implementation. Through oversight, Congress can better ensure that the benefit intended by Congress when it enacts legislation is realized once the statute is implemented.

The Chairman shared the concerns of small business that if left unsupervised, Federal agencies might not incorporate the requirements of this “Red Tape Reduction Act” into their policies and practices. This concern was in part the result of the small business community’s experience with the Regulatory Flexibility Act of 1980, which agencies had historically ignored. Because the Red Tape Re-

duction Act amended the Regulatory Flexibility Act to allow small businesses to sue agencies in court as a means of enforcing compliance, the time was right for Congressional oversight and vigilance by small businesses and their advocates in Congress.

To assist the Committee with its oversight, the General Accounting Office (GAO) conducted several studies for the Committee on agency compliance with the Administrative Procedure Act, the Regulatory Flexibility Act, and the Red Tape Reduction Act. While each report tells a slightly different story, the variation between agency interpretations and compliance with these important laws is troubling.

Throughout the 105th Congress, the Committee monitored agencies' rulemaking activities to assess their compliance with the requirements of the Red Tape Reduction Act and the Regulatory Flexibility Act. On numerous occasions, small businesses and the trade associations representing them came to the Committee with information regarding agency rulemakings that had failed to comply with the law. The Chairman and Ranking Member joined efforts on several letters to agencies, calling upon the head of the agency to bring the rulemaking into compliance with the law. The objective was to ensure that the agencies knew that Congress was indeed watching and interested in ensuring agencies complied with the procedural safeguards provided by these important laws.

The Chairman wrote to the Department of Interior's Bureau of Land Management (BLM) twice regarding a proposed wilderness management regulation that would significantly impact small companies involved in outfitting and leading climbing tours on land managed by BLM. Despite contrary information from the small businesses, the BLM had certified that the rule would not have a significant economic impact on a substantial number of small entities. Under the Regulatory Flexibility Act, an agency must perform a Regulatory Flexibility analysis unless it can certify that the rule will not have a significant economic impact on a substantial number of small entities. Use and abuse of the certification process was the subject of several letters from the Committee.

The Federal Communications Commission (FCC) received letters from the Chairman and Ranking Member regarding two separate rulemakings in which the FCC appeared not to take into consideration the full impact of their actions on small businesses. First, in the FCC's Access Charge rule, small businesses were concerned that the FCC had failed to analyze the impact of changes to the pricing of interstate access service on small long-distance carriers and certain small retail businesses that use long distance. The second joint letter addressed the concerns of small publishers of telephone directories who raised concerns about the effects on small businesses of the FCC's determination of the "reasonable" price for subscriber list information. In both rules, the small businesses sought the assistance of the Committee to urge the FCC to conduct a more thorough Regulatory Flexibility analysis before proceeding with their rules.

Two rulemakings by the Internal Revenue Service (IRS) also prompted a series of letters from the Committee for their failure to assess appropriately the impact of proposed rules on small businesses. The Chairman sent letters regarding a proposed rule to

amend the definition of “limited partner,” which was issued without appropriate attention to the impacts on small businesses. Similarly, when the IRS issued a proposed and temporary rule affecting nursery businesses, Senator Bond wrote to the IRS and the Treasury Department regarding their narrow interpretation of when IRS rules triggered the need to comply with the Regulatory Flexibility Act and the Red Tape Reduction Act. Under their interpretation, compliance was only required in the limited instances when an IRS regulation would impose a new paperwork requirement, with a specific form being required. Otherwise, IRS interpretive rules would be proposed without the benefit of a Regulatory Flexibility analysis. The Chairman’s letters clearly stated that such a narrow interpretation undermines the language in the Red Tape Reduction Act that was expressly intended to require compliance with the Regulatory Flexibility Act when an interpretive rule was proposed to amend the Internal Revenue Code.

The Committee’s actions on behalf of our nation’s home-health care providers received a great deal of visibility. A hearing in July 1998 was dedicated to this topic, and Senator Bond introduced two pieces of legislation in an effort to remedy the adverse impacts on small home-health care providers caused by the Health Care Financing Administration’s (HCFA) implementation of regulations on surety bonds and its Interim Payment System (IPS). In the first instance, HCFA issued regulations to implement a statutory requirement that home-health care agencies participating in the Medicare and Medicaid programs must obtain surety bonds. However, HCFA exceeded the statutory mandate and issued a requirement for financial guarantee bonds, instead of overpayment bonds, which placed the bonds out of reach for most small home-health care providers. A resolution of disapproval introduced by Chairman Bond, S. J. Res. 50, earned sixty cosponsors and was the driving force behind HCFA’s agreement to suspend the effective date of its surety bond regulations pending a study by the GAO and additional consideration on the contents of the rules.

HCFA’s surety bond regulations and its regulations to implement an IPS were also controversial because HCFA issued both rules without first publishing a notice of proposed rulemaking which provides the opportunity for advance notice and comment by the regulated community. At the hearing in July of 1998, numerous witnesses spoke to the problems being caused by HCFA’s regulations and the need for relief to ensure that reputable home-health care providers and their beneficiaries were not harmed by these regulations.

The Committee also focused attention on provisions of the Red Tape Reduction Act that sought to ensure that small businesses get a fair shake during agency enforcement actions. A hearing was held in Kansas City, Missouri, in August of 1997 to receive testimony from small businesses regarding regulatory fairness. While progress was being made, the witnesses clearly expressed the need for additional oversight from Congress and additional commitment from Federal agencies to internalize the requirements of the Red Tape Reduction Act. A strong emphasis was placed on the important role of compliance assistance, and in 1998, the Committee reviewed reports from the agencies on their implementation of the

compliance assistance and penalty reduction and waiver provisions of the law. The Committee also monitored the Regulatory Fairness Program established at the Small Business Administration (SBA) pursuant to the Red Tape Reduction Act.

#### B. REGULATORY REFORMS FOR SMALL BUSINESSES

In addition to oversight, the Committee explored the need for additional legislation to reduce the regulatory burdens on small businesses. In June of 1997, the Committee received testimony from Senator Spencer Abraham and Representative Gary Condit on S. 389, the "Mandates Information Act of 1998." The Chairman was a lead cosponsor of this bill, which sought to build on the successes of the Unfunded Mandates Reform Act of 1995. The Chairman joined Senator Richard Shelby as a lead sponsor of "The Stealth Tax Prevention Act," which would have restricted the ability of the Internal Revenue Service (IRS) to raise taxes through regulation. In addition, Senators Shelby and Bond introduced legislation to create a Congressional Office of Regulatory Analysis (CORA), which would assist Congress in fulfilling its responsibilities under the Congressional Review Act. Although these bills were not enacted, each generated meaningful and productive discussions on the continued need for regulatory reforms tailored to address the impacts on small businesses.

The Committee's exploration of agency compliance with Section 610 of the Regulatory Flexibility Act assisted the Governmental Affairs Committee in developing a proposal to revise the periodic review of rules provision enacted in 1980. Despite evidence from the GAO that many agencies were failing to comply with the Act, the reform language was not supported by the Administration and subsequently dropped during negotiations with the Administration.

In an effort to assist small businesses with their efforts to comply with environmental regulations, the Committee approved an amendment offered by Senator Conrad Burns to create a pilot program to establish an advisory committee on Small Business Environmental Assistance programs. While this program was approved by the full Senate, it was not considered in the House of Representatives; however, it is anticipated that this measure will be considered again in the 106th Congress.

#### C. SMALL BUSINESS TAX ISSUES

Throughout the 105th Congress, tax equity continued to be a top priority for small businesses. In hearings before the Committee, a wide range of small businesses reported the effects of disparate tax treatment. Home-based businesses testified about the lack of a level-playing field they face on issues like the deductibility of office expenses—a business based in the owner's home may only deduct such expenses in limited circumstances, while a business that owns or rents a separate facility can deduct the costs in full. Similarly, the self-employed emphasized the inherent unfairness of limitations on the deductibility of their health-insurance costs when their corporate competitors can deduct them completely. Entrepreneurs, too, stressed the inequity caused by the current worker-classification rules, which in many cases force them to structure their busi-



ness relationships not on practicality and the best economic decision, but on complex and obscure criteria dictated by the IRS.

Small business owners also repeatedly expressed their frustration with the overall complexity of the tax code. With thousands of pages of statutes, regulations, forms, instructions, and other guidance, entrepreneurs are spending countless hours of nonproductive time keeping records, completing forms, and simply trying to keep up with all the requirements of the current tax system. By some estimates, small business owners are spending more than 5% of their revenues on tax compliance, which does not include the amount they spend to pay the tax bill. With few employees, small businesses must spend these revenues in many cases on outside bookkeepers, accountants, and lawyers to make sure that the business meets its tax obligations and does not run afoul of the myriad rules and regulations. As too many witnesses testified, the time and money required for tax compliance takes valuable resources away from the small business' ability simply to be productive.

The report of the National Commission on Restructuring the Internal Revenue Service and the Senate hearings on IRS abuses highlighted many of the obstacles that small firms face when dealing with the IRS. Witnesses before the Committee testified that onerous audits and difficulties in resolving honestly disputed issues can mean the end of a small business. In addition, the Committee heard accounts of IRS personnel failing to provide appropriate customer service and respect for taxpayers' rights, which not only places enormous burdens on the individual taxpayer, but also reduces the confidence of all taxpayers that the tax system is fair.

Chairman Bond introduced legislation with Senators Snowe and Nickles at the start of the Congress to eliminate some of the inequities identified by small business owners. The Home-Based Business Fairness Act of 1997 (S. 460) included provisions to provide full deductibility of health insurance for the self-employed and to restore the home-office deduction for businesses operated out of the home. In addition, the bill contained a clear test for determining when a worker is an independent contractor. The bill also provided protection against the IRS second guessing those decisions and forcing businesses that contract with independent contractors to pay large sums for back taxes, interest, and penalties for worker classifications made in good faith. The bill received strong support from the small business community, and by the end of the 105th Congress, it had 36 cosponsors in the Senate.

The Taxpayer Relief Act of 1997 made two parts of the Home-Based Business Fairness Act a reality—the home-office deduction was restored and the deductibility of health insurance for the self-employed was accelerated, reaching 100% in 2007. The Taxpayer Relief Act also included several other provisions beneficial to small business including lower capital-gains tax rates and an expanded exclusion for capital gains resulting from investments in small firms. Additionally, the Act provided important relief from the estate tax, especially for family-owned businesses and farms, and it reduced the burdens of the alternative minimum tax for many small business owners and farmers.

In response to calls for IRS restructuring and strengthening of taxpayer rights, the Chairman introduced legislation during the

Second Session of the 105th Congress to address these issues as they pertain specifically to small business taxpayers. With the strong support of the small business community, major parts of the Putting the Taxpayer First Act of 1998 (S. 1669) were implemented by the IRS, including restructuring the agency along customer lines for taxpayers with similar needs and characteristics such as small businesses and the self-employed. In addition, a number of provisions from this legislation were included in the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105–206), which was signed into law in July 1998. As a result, significant steps were taken to create an environment of service and respect for small businesses across the country as they interact with the IRS and seek to meet their tax obligations.

As the 105th Congress drew to a close, additional progress was made on several tax issues important to small businesses. As part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, the self-employed health-insurance deduction was again accelerated so that full deductibility will be achieved in 2003 (instead of 2007) and a greater deduction will be available in each of the preceding years. The Act also included several provisions to reduce tax burdens on America's farmers who have faced difficult economic times in recent years. In addition, the Act extended a number of expiring tax incentives important to small firms in a variety of industries.

In retrospect, the 105th Congress enacted legislation that significantly improves the tax environment for small businesses in America. While progress was made, however, much work remains to be done to ensure equal treatment for all small firms and to provide a fair and simple tax code that is not economically draining on the business enterprises vital to our economy. In particular, the Chairman remains committed to ensuring that the self-employed are treated fairly with respect to the deductibility of health insurance at the earliest possible date. It is also anticipated that efforts to reform the independent contractor rules will continue so that business relationships can once again be dictated by sound business decisions and not the tax laws. In addition, the Committee will continue its oversight of the IRS to ensure that agencies minimize the burdens on all taxpayers, especially through compliance with the Small Business Regulatory Enforcement Fairness Act (*i.e.*, the Red Tape Reduction Act, P.L. 104–121), which the Chairman authored during the 104th Congress.

#### D. WORKPLACE ISSUES

The Occupational Safety and Health Administration (OSHA) continues to raise major concerns for small business owners. The uniform regulations promulgated by OSHA, as with other agencies, often impose disproportionate burdens on small businesses. In particular, small businesses sought the assistance of the Chairman regarding OSHA's Cooperative Compliance Program (CCP). The Chairman met with Charles Jeffress, the new Assistant Secretary for Occupational Safety and Health at the Department of Labor, and urged him to work with employers seeking in good faith to comply with OSHA standards and to reduce occupational injuries and illnesses. The agency's CCP initiative was viewed as coercive

by many businesses because it required them to implement a prescriptive safety and health program or face the full force of OSHA with a wall-to-wall inspection.

Other issues brought to the Committee's attention included OSHA's efforts to address ergonomic risk factors in the workplace and the controversial union practice of engaging in "salting" campaigns to harass and intimidate non-union workplaces.

#### E. ACCESS TO CAPITAL: SMALL BUSINESS ADMINISTRATION PROGRAMS

Legislation developed by the Committee in the 105th Congress to strengthen the SBA's credit programs has led to an enormous expansion in the availability of loans and investment capital for small business borrowers, while reducing the cost and risk exposure to the taxpayers. For small business owners who often have difficulty securing capital from traditional lending sources such as commercial banks, the strength and availability of SBA loan guarantee and investment guarantee programs are critical components to the success of small businesses.

In 1997, the Committee approved the "Small Business Reauthorization Act of 1997," which made important changes in the Small Business Investment Company (SBIC) program to permit manageable program growth while strengthening the SBA's oversight of the program. Most importantly, the 1997 Act gives the SBA the option to make five-year leverage commitments, which would conform the program to typical investment strategy patterns.

The Small Business Reauthorization Act also made important changes in the SBA's Microloan program by making the program permanent. The Microloan program had been a pilot program designed to test whether the SBA could deliver a loan program for very small borrowers, who were seeking loans of less than \$25,000. In addition, the bill addressed the 504 Certified Development Company program. In 1995, Congress approved legislation requiring that the funding requirements be fully supported by fees rather than Congressional appropriations. The Reauthorization Act directed that the SBA reduce the fees as the performance of the program improved and less funds are needed to fund the loss reserve.

In 1998, the Committee unanimously approved the "Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998" (H.R. 3412). Originally, this bill passed the House of Representatives and made three technical changes in the SBIC Program. This House-passed version of the bill was amended by Chairman Bond to include the full texts of S. 2372, the "Year 2000 Readiness Act," S. 2407, the "Small Business Programs Restructuring and Reform Act of 1998," and provisions from S. 2448, the "Small Business Loan Enhancement Act," which was sponsored by Senator John Kerry, the Committee's Ranking Member.

As approved by the Committee, H.R. 3412 authorized the SBA to establish a pilot loan guarantee program to assist small businesses in correcting Year 2000 (Y2K) computer problems. Further, the bill established two new reporting requirements for the SBA relating to pilot credit programs. H.R. 3412 was approved by the Senate on September 30, 1998. The House of Representatives was unable to act on the bill before it adjourned for the 105th Congress.

#### F. WOMEN-OWNED BUSINESSES

During the Second Session of the 105th Congress, Chairman Bond maintained his commitment to support the continued growth and expansion of women-owned businesses. In the First Session, Chairman Bond authored the Small Business Reauthorization Act of 1997, which addressed several programs administered by the SBA that serve the women business owners of today and tomorrow. As part of the Committee's oversight in 1998, it closely monitored the SBA's handling of the National Women's Business Council and the Women's Business Center program. Chairman Bond was joined by Senator Olympia Snowe in introducing "The Home-Based Business Fairness Act" (S. 460) to provide tax relief called for during the first hearing of the 105th. Additional support for the bill was provided at a field hearing in Bangor, Maine, on February 6, 1997, attended by the Chairman and Senator Snowe. Two parts of S. 460 were included in the Taxpayer Relief Act of 1997 (P.L. 105-206) passed by Congress on July 22, 1998.

#### G. FEDERAL PROCUREMENT

During the 105th Congress, the Committee made significant progress on expanding opportunities for small business to participate in Federal procurement. Doing business with the Federal government can make a major difference to small businesses that operate on a slim margin and need every customer they can get. Making contracting opportunities available to a wide array of small businesses also helps a broader cross-section of the public to benefit from Federal activities and expenditures, rather than reserving those benefits for a narrow sliver of well-connected, insider large businesses. In the long run, it also means real benefits for the taxpayers, since greater competition means lower prices for the goods and services the Government purchases.

The most notable and most exciting new endeavor in the contracting arena is the HUBZone Act, authored by Chairman Bond and adopted as part of the Small Business Reauthorization Act of 1997. This new program seeks to direct a greater portion of contracts to economically distressed areas, to bring jobs and opportunities to places with some of the most unrelenting poverty. Small businesses truly are on the front lines in the battle to reclaim and redevelop these areas, and the job-creating power of small businesses is their most potent weapon. By setting increasing goals for contracting in HUBZone areas, and by ensuring that eligible small businesses must hire at least 35% of their workforce from these distressed areas, the HUBZone law offers a real chance to bring economic activity and growth to our inner cities, distressed rural counties, and Indian reservations.

The Committee made progress on other procurement matters as well. New legislation in the Small Business Reauthorization Act clearly defines a "bundled contract" so this practice can be monitored more effectively and its impact on small business measured. Combining several smaller contract opportunities into larger contracts likely reduces the ability of small business to participate, since they often are unable to fill all the additional contract requirements. This effectively excludes small business from con-

tracting and sets aside increasing chunks of procurement activity for large businesses.

Congress also increased the goal for small business participation in Government-wide procurement to 23% of prime contract dollars, up from the 20% adopted into law in 1988. To enhance the likelihood that these changes translate into real opportunity for small business, the Committee also adopted legislation to disclose and control efforts by Executive agencies to change their statistical methods. Reliable and valid statistics are crucial for the Committee and for the small business community to oversee the Government's compliance with the 23% goal. The temptation for some agencies to engage in statistical games that appear to increase small business contracting, without actually doing so, is a threat to the entire small business procurement program. Although the legislation was not passed by the House of Representatives, it was adopted both at the Committee level and by the full Senate. The Senate and the Committee on Small Business are now on-record as disfavoring sudden, undisclosed statistical changes that produce unexplained changes in the performance of Executive agencies in their small business contracting.

#### H. HEALTH CARE

Health care continued to be one of the top concerns of small businesses during the 105th Congress. Language in the Balanced Budget Act of 1997 directed HCFA to issue a series of regulations intended to curb the rising cost of home-health care and to rid the Medicare and Medicaid programs of firms engaged in fraud and abuse. HCFA issued regulations that exceeded Congressional intent, driving many reputable home-health care providers out of business. Chairman Bond led the fight to reduce the adverse impact of HCFA's regulations that had devastating effects on the small businesses and small non-profits in home-health care.

On June 10, 1998, the Chairman introduced S.J. Res. 50, a resolution of disapproval to strike HCFA's regulation to implement the requirement that home-health care agencies obtain a surety bond for the greater of \$50,000 or of 15% of their annual Medicare receipts. This resolution was the first one introduced under Subtitle E of the Red Tape Reduction Act, known as the Congressional Review Act, that gained broad-based support in the Senate and the House of Representatives. With 60 Senate cosponsors, the resolution precipitated HCFA's suspension of the surety-bond rule pending completion of a GAO study and, potentially, the development of a new proposal. As the result of an agreement among HCFA, the Chairman, and Senators Charles Grassley and Max Baucus, HCFA issued a Federal Register notice on July 31, 1998, suspending deadline for compliance with the surety rule. HCFA further agreed not to enforce the rule without providing at least 60 days notice, and not before February 15, 1999.

On July 15, 1998, the Chairman introduced the Medicare Home-Health Care Beneficiary Protection Act of 1998 (S. 2354), to put a moratorium on the IPS that limits reimbursement for services provided on or after October 1, 1997, pending the development of an alternate payment system. During the Fiscal Year 1999 appropriations cycle, Chairman Bond led efforts to resolve the IPS crisis,

which ultimately resulted in a solution included in the Omnibus Appropriations Act for Fiscal Year 1999. Signed into law on October 21, 1998, this stopgap measure increased payments to home-health care providers, and delayed until October 1, 2000, HCFA's proposed 15% reduction in reimbursements. The law will ensure continued access to home-health care for seniors and the disabled across the nation.

#### I. SECURITIES LAW

Small businesses were the beneficiaries of securities-related laws enacted by the 105th Congress. The Securities Litigation Uniform Standards Act of 1997 (S. 1260) amended the Securities Acts of 1933 and 1934 to preempt state statutory and common law in connection with class actions alleging any untrue statement or omission of a material fact in connection with the purchase or sale of a "covered security," or that a defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a "covered security." In addition, the bill permits any class action brought in state court involving a "covered security" to be removable to Federal district court.

#### J. BANKING AND FINANCIAL INSTITUTIONS

In connection with its overall efforts to provide regulatory reform for small businesses, the Committee also focused on regulatory relief for small banks. Small banks benefitted from three banking and financial institutions-related initiatives in the 105th Congress. First, the Credit Union Membership Access Act (H.R. 1151), which became Public Law 105-219, permits credit unions to have members from multiple occupational groups, provided that the number of persons in each group (at the time the group joins the credit union) does not exceed 3,000, with limited exceptions. The bill also limits commercial lending activities of credit unions, adopts certain Department of the Treasury recommendations that improve regulation of credit union safety and soundness, and changes voting requirements to make it easier for credit unions to convert to mutual savings banks and thrifts.

Second, the Consumer Bankruptcy Reform Act of 1998 (S. 1301) establishes a "means test" for Chapter 7 bankruptcies, by permitting a court to dismiss a Chapter 7 case or convert it to Chapter 13 if the court finds "abuse" of the bankruptcy system.

Third, the Financial Services Act of 1998 (H.R. 10) eliminates the restrictions on affiliation among banks, securities firms and insurance companies under the Glass-Steagall Act and permits such companies to combine with one another as affiliates under an umbrella financial-holding company. In addition, the bill regulates the insurance and securities underwriting and sales activities of Federally chartered depository institutions.

While the Credit Union Membership Access Act was the only initiative enacted on that issue during the 105th Congress, efforts to assist small banks will likely continue in the 106th Congress.

## K. TELECOMMUNICATIONS

During the 105th Congress, the Committee took action regarding two FCC rules that affect small telephone communications firms. In a 1997 Report and Order, the FCC modified the methods by which local-exchange carriers charge long-distance carriers for access to their network, substantially increasing the costs faced by long-distance carriers that utilize the local-exchange carriers' tandem switches. The Committee was concerned about the FCC's failure to analyze the impact of these changes on the pricing of interstate access service both on small long-distance carriers and on certain small retail businesses that use long-distance services. Chairman Bond and Ranking Member Kerry sent a joint letter to the FCC concerning the agency's compliance with the Regulatory Flexibility Act on this issue. The Committee's letter noted the opportunity provided the FCC by the Petitions for Reconsideration and encouraged the FCC to reassess the impact of its recent decisions on both small business long-distance carriers and the small business retailers that such carriers serve.

Additionally, producers of independent telephone directories contacted the Committee regarding the potential impact of a pending FCC rulemaking to implement provisions of the Telecommunications Act of 1996. Congress intended Section 222(e) of the Act to increase competition and enhance the ability of independent publishers to compete with directories wholly owned by telephone companies. Small businesses involved in directory publishing were concerned that the FCC rule to determine the "reasonable" price for subscriber list information might not recognize the minimal cost imposed on telephone companies when providing such information to requesting independent directories. Chairman Bond and Ranking Member Kerry wrote FCC Chairman William Kennard urging the FCC to conduct a thorough Regulatory Flexibility analysis prior to issuing a final rule and to ensure the rule achieved the competition Congress intended by protecting small businesses from market abuses.

## II. REGULATORY FAIRNESS: OVERSIGHT AND IMPLEMENTATION OF THE RED TAPE REDUCTION ACT

### A. SMALL BUSINESS OMBUDSMAN AND REGIONAL FAIRNESS BOARDS

#### *Background*

The Red Tape Reduction Act [Small Business Regulatory Enforcement Fairness Act (SBREFA), P.L. 104-121] charged the Small Business Administration (SBA) with implementation of the Regulatory Fairness program. The law directs the SBA to designate a Small Business and Agriculture Regulatory Enforcement Ombudsman (Ombudsman) to receive comments from small businesses regarding unreasonable and excessive agency enforcement actions. The Ombudsman is to issue an annual report to Congress that includes an evaluation of agencies' responsiveness based on comments from small businesses. The Ombudsman also coordinates the activities of the 10 Regional Small Business Regulatory Fairness Boards (Fairness Boards), each comprising five small business owners.

### *Committee Action*

During the 105th Congress, the Committee received complaints from several members of the Fairness Boards that the SBA appeared more concerned with “process” and “being fair” to the Federal agencies than giving a voice to the concerns of small business. Through letters, direct conversations, and a Committee hearing, Chairman Christopher S. “Kit” Bond worked to educate Peter Barca, the SBA-appointed Ombudsman, on the importance of rating the agencies in order to provide the impetus for agencies to change their policies or culture. Despite these overtures, the Ombudsman’s first report to Congress, issued on December 31, 1997, was disappointing to the Chairman and many in the small business community. Joined by House Small Business Committee Chairman James Talent, Chairman Bond sent a letter to the Ombudsman expressing disappointment with the SBA’s report. In his reply, Mr. Barca acknowledged the failure to include a “more rigorous agency evaluation” and committed to include an evaluation in future reports. On October 30, 1998, Mr. Barca advised Chairman Bond that the second annual report to Congress would be delivered on February 28, 1999, in order to produce a report that better reflects a full year’s activities of the Fairness Boards.

### B. BUREAU OF LAND MANAGEMENT WILDERNESS MANAGEMENT RULE

#### *Background*

Throughout 1997, numerous small businesses requested Chairman Bond’s assistance on a Bureau of Land Management (BLM) proposal governing management of BLM wilderness areas. The BLM had certified that the agency’s proposed rule would not have a significant economic impact on small businesses, despite contrary information provided both to the agency and Congress. Climbing outfitters and guide services that organize and lead trips as well as the manufacturers and resellers of climbing equipment disagreed with the BLM’s certification, stating that a prohibition on installation or replacement of fixed anchors would place climbers’ safety in jeopardy and effectively restrict the use of internationally recognized climbing destinations under BLM’s management.

#### *Committee Action*

Chairman Bond wrote the BLM on March 10, 1997, regarding the potential impact of the proposed regulation on small businesses that manufacture rock climbing equipment and provide guide services. In his reply, the Acting Director of the BLM, Sylvia V. Baca, offered a partial explanation for the initial certification and committed the agency to a careful consideration of the issues raised by small businesses and the Chairman’s letter. On January 14, 1998, Chairman Bond sent a letter to the new Director of the BLM, Pat Shea, urging him to ensure that the BLM conducted a meaningful Regulatory Flexibility analysis prior to issuing a final rule. In the Unified Agenda published November 9, 1998, the BLM reported that issuance of a final rule is imminent, but also maintained that a Regulatory Flexibility analysis is not required.



### C. SMALL BUSINESS ADVOCACY REVIEW PANELS AT EPA AND OSHA

#### *Background*

Small businesses have had difficulty complying with the regulations issued by agencies such as the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA), many of which place a great financial burden on small businesses. Because of the significant impact of rules issued by these agencies, the Red Tape Reduction Act (P.L. 104–121) requires the EPA and OSHA, prior to publishing an initial Regulatory Flexibility analysis, to convene a Small Business Advocacy Review Panel composed of Federal employees from the SBA Office of Advocacy, the Office of Management and Budget (OMB) and the agency initiating the rulemaking, to elicit comments from small businesses on the rule's impacts. Under the law, panels are convened for 60 days and must report to the agency on comments and recommendations from small entities related to the rule's impacts. The panel report becomes part of the rulemaking record, and the agency head is to give consideration to the comments and recommendations provided.

#### *Committee Action*

To date, the EPA has completed panels for 13 proposed rules: nine panels in 1998 and five in 1997. Although success of the panel process varies with each rule, SBA's Office of Advocacy generally credits the EPA with being responsive to concerns raised. Three regulatory proposals were revised to reduce the small business impacts, and the EPA often included in its proposed rules a regulatory alternative suggested by the small entities participating in the panel process.

With respect to OSHA, one panel was completed in 1997 on a rule to address occupational exposures to tuberculosis. Small businesses were not pleased with OSHA's responsiveness to their concerns. In October 1998, OSHA convened a panel on a proposal to require employers to implement comprehensive safety and health programs. The panel issued its report on December 18, 1998, highlighting deficiencies in OSHA's cost estimates and draft initial Regulatory Flexibility analysis. The report also recommended non-regulatory alternatives to OSHA.

### D. IRS RULES

#### *Background*

During the 105th Congress, Chairman Bond worked to relieve the enormous tax burden placed upon small businesses by the Internal Revenue Service (IRS). Many small businesses have difficulty comprehending the complex language of the tax code and cannot afford legal help often used by big businesses. The IRS is required to comply with the Regulatory Flexibility Act and the Red Tape Reduction Act on interpretive rules that impose collection-of-information requirements on small business.

### *Committee Action*

Beginning in March of 1997, Chairman Bond sent letters to the IRS and the Treasury Department regarding rulemakings that failed to address the concerns of small business. The first series of letters were in response to an IRS interpretive rule to change the definition of "limited partner," which ignored the impacts on small business. Chairman Bond and numerous other Senators sent a joint letter to Treasury Secretary Robert Rubin expressing disappointment over the failure to abide by the Regulatory Flexibility Act and the Red Tape Reduction Act. In July 1997, Chairman Bond secured a moratorium on issuance of the proposed rule as part of the Taxpayer Relief Act of 1997, which was signed into law on August 5, 1997. Consequently, the rulemaking was suspended through June 30, 1998.

On September 19, 1997, Chairman Bond again called the IRS and the Treasury Department to task for noncompliance with the Regulatory Flexibility Act and the Red Tape Reduction Act. This rule was of great concern to small nursery farming businesses, which have historically enjoyed a special exemption from IRS rules on uniform capitalization. Their continued eligibility for this important exemption came into question when the IRS issued temporary and proposed rules that changed the definition of "farming business." Two sentences added to the definition would have disqualified a nursery business that "merely resells plants" or that grows plants in temporary containers, resulting in the imposition of significant recordkeeping burdens associated with maintaining inventories.

The Chairman's letter to the IRS raised concerns shared by more than 750 small businesses, which submitted comments to the IRS for its public hearing on the rule in November 1997. In an October 14, 1997, letter to Chairman Bond, the IRS Chief Counsel asserted that the definition of farming business was not being modified and, consequently, no new recordkeeping requirements would be imposed on small businesses. Without such recordkeeping requirements, Regulatory Flexibility would not be triggered. In December, the IRS published a clarification of the proposal, stating that the definition of farming business was not being changed.

Small nursery farming businesses received this information as vindication of their concerns, and they applauded Chairman Bond for his leadership on the issues. This experience also demonstrated to the small businesses involved the importance of agencies receiving factual information from small businesses early in the rule-making process. To formalize this interaction, the recommendation was made to amend the Regulatory Flexibility Act to require the IRS to convene Small Business Advocacy Review Panels before issuing an initial Regulatory Flexibility analysis, a requirement the Red Tape Reduction Act applied to the EPA and OSHA.

### *Legislation*

On February 24, 1998, Chairman Bond introduced the Putting Taxpayers First Act (S. 1669), which included three regulatory reform provisions to benefit small businesses. First, S. 1669 included the "Stealth Tax Prevention Act of 1997" (S. 831). Chairman Bond joined Senator Richard Shelby in sponsoring S. 831, which would

designate any final IRS rule that raises revenues beyond the intent of Congress or current tax practices as a “major rule” under the Congressional Review Act. This would provide Congress 60 days to enact a resolution of disapproval before the offending rule could take effect. The second regulatory reform provision would increase small business participation in IRS rulemaking by including the IRS with OSHA and the EPA as agencies that must convene a Small Business Advocacy Review Panel prior to issuing a proposed rule with a significant economic impact on small entities.

The third and final reform was to provide taxpayers a choice with respect to recovery of costs and certain fees. Under the Internal Revenue Code, a taxpayer may recover costs and fees, including attorneys’ fees, against the IRS if he or she prevails and the IRS’ litigation position was not substantially justified. The Equal Access to Justice Act (EAJA), as amended by the Red Tape Reduction Act, permits a small business to recover such costs when an unreasonable agency demand for fines or civil penalties is not sustained in court or in an administrative proceeding. In addition, a small business may also recover such costs and fees under the EAJA when it is the prevailing party, and the agency enforcement action is not substantially justified.

Under current law, the EAJA prohibits a taxpayer seeking to recover costs and fees in an IRS enforcement action from doing so under the EAJA if the fees and costs can be recovered under the Internal Revenue Code. S. 1669 would permit taxpayers to elect whether to pursue recovery of attorneys’ fees and expenses under EAJA or the Internal Revenue Code. Although numerous provisions of S. 1669 were enacted as part of the IRS Restructuring and Reform Act of 1998, these three regulatory provisions were not included in the IRS bill when it was considered by the Senate.

#### E. REGULATORY FLEXIBILITY ACT OF 1980 (JUDICIAL REVIEW)

##### *Background*

The Red Tape Reduction Act bolstered the hand of small businesses by allowing judicial review of agency compliance with the Regulatory Flexibility Act of 1980 (Regulatory Flexibility Act). At least 14 suits have been filed under the Act. Of the 10 decided, two cases best illustrate the importance of this new tool.

On February 24, 1998, the U.S. District Court for the Middle District of Florida ruled that the National Marine Fisheries Service (NMFS) failed to comply with the Regulatory Flexibility Act on a rulemaking to reduce the quota for shark fishing by 50%. NMFS had improperly certified that the rule would not have a significant economic impact on small entities and failed to conduct an appropriate final Regulatory Flexibility analysis before issuing the final rule. The court stated that the agency’s refusal to recognize the economic impacts “raises serious questions about its efforts to minimize those impacts through less drastic alternatives.” The court kept jurisdiction over the case when it remanded the Regulatory Flexibility analysis to the agency with instructions to analyze the economic effects and alternatives.

On May 15, 1998, the agency submitted its analysis to the court, acknowledging the rule’s “significant financial hardship to shark

fishermen.” On October 16, 1998, the court granted the plaintiffs request that a special master be appointed to assist the court in reviewing the agency’s remand submission. The court instructed the special master to assess the bona fides of the submission with respect to the “availability of workable alternatives, regulatory or otherwise” to reduce the financial injury to shark fishermen.

In a separate case, on May 13, 1998, the U.S. District Court for the District of Columbia granted a motion for summary judgment and remanded a regulation back to the BLM. Under the Regulatory Flexibility Act, the BLM had certified that the rule would not have a significant economic impact on a substantial number of small businesses. The Northwest Mining Association challenged the rule and the BLM’s certification because the BLM did not use the SBA’s definition of a small mining business, and the BLM did not follow the procedures provided in the Regulatory Flexibility Act to adopt an alternate definition. The SBA’s Office of Advocacy and other mining associations filed amicus briefs in the case.

The court noted that the small business impacts imposed by the rule “appear to have a large impact on the small miner” and are “precisely what the procedural safeguards of the [Regulatory Flexibility Act] and the [Administrative Procedure Act] are set in place to address.” The court acknowledged the public interest in protecting the environment, but also noted “the public interest in preserving the rights of parties which are affected by government regulation to be adequately informed when their interests are at stake and to participate in the regulatory process as directed by Congress.” Chairman Bond hailed this decision, noting that the Regulatory Flexibility Act was being used as intended to ensure that Federal agencies do not overlook their obligations to identify and reduce the impacts of their regulations on small business.

#### F. GAO REPORT ON APA COMPLIANCE

##### *Background*

In August 1998, the General Accounting Office (GAO) released a report to Chairman Bond entitled, “Agencies Often Published Final Actions Without Proposed Rules.” At the Chairman’s request, the GAO had studied the frequency with which Federal agencies issue final rules without the benefit of a notice of proposed rulemaking. The GAO found that agencies are taking advantage of a narrow exemption in the Administrative Procedures Act (APA) that allows agencies to waive the notice and comment procedures for “good cause” with compelling reasons. Of the 4,658 rules that the GAO reviewed in 1997, about half of these actions were published without notice of proposed rulemaking. While many of these rules may be administrative or technical with limited applicability, 11 of the 61 major rules reviewed by the GAO were published without a notice of proposed rulemaking—18% of the major rules.

##### *Committee Action*

The GAO’s findings were of particular interest to the Committee because an agency’s obligation to comply with the Regulatory Flexibility Act and the Red Tape Reduction Act is triggered by compliance with APA’s notice and comment requirements. Consequently,

when an agency claims that it does not have to comply with the notice and comment requirements, it can seek to avoid the procedural safeguards in these laws as well. The GAO found many instances in which agencies stated that because APA notice and comment were not required, then the Regulatory Flexibility Act was not applicable or that a Regulatory Flexibility analysis was not required. This topic was discussed during the Committee's hearing on two rules issued by the Health Care Financing Administration (HCFA). Both were issued as final rules with an opportunity to comment without HCFA first issuing a notice of proposed rule-making. The GAO report will assist the Committee's ongoing oversight of agency compliance with Regulatory Flexibility and the Red Tape Reduction Act.

### **III. REGULATORY REFORMS FOR SMALL BUSINESS**

#### **A. MANDATES INFORMATION ACT**

##### *Legislation*

Chairman Christopher S. "Kit" Bond joined Senator Spencer Abraham in introducing the Mandates Information Act (S. 389) early in 1997. S. 389 would amend the Unfunded Mandates Reform Act of 1995, which the Chairman also supported, to allow a point of order against legislation that would impose private-sector mandates costing more than \$100 million. Under S. 389, the Congressional Budget Office (CBO) would provide Congress with detailed information on the effects of such mandates, including the effect on consumer prices, workers' wages, job creation and small business growth. In his capacity, as a member of the Budget Committee, Senator Bond provided an opening statement in support of S. 389, for a February 12, 1997, Budget Committee hearing on the bill. Senator Bond encouraged the Budget Committee to consider the important benefits of this bill.

On June 4, 1997, during Small Business Week, the Committee held a hearing on S. 389. To facilitate movement of S. 389, the Budget Committee waived its jurisdiction, and the Governmental Affairs Committee approved it on June 17, 1997. Although the companion bill, H.R. 3534, passed the House on May 19, 1997 by a vote of 279 to 132, S. 389 did not reach the Senate Floor prior to adjournment.

#### **B. CONGRESSIONAL OFFICE OF REGULATORY ANALYSIS ACT**

##### *Legislation*

On February 25, 1998, Chairman Christopher S. "Kit" Bond joined Senator Richard Shelby as an original cosponsor of the Congressional Office of Regulatory Analysis Act (S. 1675) to create a Congressional Office of Regulatory Analysis (CORA). Patterned after the CBO, but on a smaller scale, CORA would be a professional, nonpartisan office to analyze major and non-major regulations and help Congress fulfill its oversight powers provided under the Congressional Review Act. The bill would put first priority on analysis of major rules, second priority on non-major rules recommended for analysis by a Congressional committee, and third priority on non-major rules recommended for review by individual

Members of Congress. The bill would also consolidate within CORA certain activities assigned to the CBO under the Unfunded Mandates Reform Act of 1995 and duties assigned the General Accounting Office (GAO) under the Congressional Review Act. In addition, CORA would prepare an annual report on the estimated total cost of regulations.

Although the House version of CORA was approved by four committees, it was not considered by the full House of Representatives. Absent consideration by the House, which was expected to precede Senate action, the legislation was not considered by the Senate during the 105th Congress.

### C. SECTION 610 REFORMS

#### *Background*

Under section 602 of the Regulatory Flexibility Act, agencies are required to publish a “regulatory flexibility agenda” in April and October of each year to inform the public of agency rulemakings that are likely to have a significant economic impact on a substantial number of small entities. The Unified Agenda of Regulatory and Deregulatory Actions is published to meet this requirement as well as other requirements. Section 610(a) of the Act requires agencies to publish a plan for the periodic review of their existing rules that have or will have a significant economic impact on small entities. That plan must provide for the review of all such rules within 10 years of their publication as a final rule. Section 610(c) requires agencies to publish a notice that includes a list of existing rules that have a significant economic impact on a substantial number of small entities, which are to be reviewed in accordance with section 610 during the next 12 months. The notice must include a brief description of each rule, the need for and legal basis of the rule, as well as an invitation for public comment on the rule. In recent years, agencies have included in the Unified Agenda the announcement of rules to be reviewed under section 610.

#### *Committee Action*

In response to a request from this Committee, the GAO prepared an April 22, 1997, report (GAO/GGD/OGC-97-77R) on whether agencies were using the Unified Agenda appropriately to satisfy the notification requirements in section 610(c). The GAO identified 21 entries labeled “Section 610 Review” in the November 29, 1996, edition of Unified Agenda, but concluded that none of these entries satisfied all the requirements of section 610(c). The GAO offered recommendations to improve agencies’ compliance with section 610(c) and to assist the public in identifying the rules to be reviewed. The GAO later updated its April 1997 report by examining agencies’ entries in the October 29, 1997, edition of the Unified Agenda. In its February 12, 1998, report and testimony for the House Committee on Small Business (GAO/GGD-98-61R and GAO/T-GGD-98-64), the GAO concluded that 31 of the 34 entries in the Agenda labeled “Section 610 Review” were not in compliance with section 610(c). The GAO recommended that the Office of Management and Budget’s Office of Information and Regulatory Affairs and the Regulatory Information Service Center, which prepares the

Unified Agenda, ensure that future entries labeled “Section 610 Review” comply with section 610(c) so that the public is not misled.

#### *Legislation*

On June 27, 1997, Senators Fred Thompson and Carl Levin introduced S. 981 to provide comprehensive regulatory reform through cost-benefit analysis and risk assessment. Many small business organizations that supported the bill were especially interested in the provision that would provide for periodic review of existing regulations. The review of rules was opposed by several environmental groups. The staff of the Committee on Governmental Affairs consulted with the Committee on Small Business to craft alternate language that would retain the support of small business. Revisions to section 610 were recommended.

On March 10, 1998, by a vote of eight to four, the Committee on Governmental Affairs amended and approved the Chairman’s mark, which included a provision to revive section 610. Supported by small business, the changes would (1) require agencies to develop new plans for the periodic review of rules, with those plans being revised every five years; (2) provide the opportunity for small businesses to comment on the draft plans proposed by agencies before they become final; and (3) require the agencies to publish the conclusion of their reviews of rules under section 610. During the summer of 1998, negotiations between the sponsors of S. 981 and the Administration produced a compromise bill that did not include the section 610 language because of opposition from the Administration. S. 981 never reached the Senate Floor.

### D. ENVIRONMENTAL COMPLIANCE TOOLS

#### *Background*

On April 28, 1998, Chairman Bond convened a hearing entitled “Environmental Compliance Tools for Small Business.” Witnesses provided testimony on the complexity of environmental regulations and the importance of compliance assistance designed to help small businesses comply with the laws and regulations administered by the Environmental Protection Agency.

#### *Legislation*

Earlier in the 105th Congress, Senator Conrad Burns introduced the Small Business Regulatory Assistance Act of 1998 (S. 1957), a bill to provide compliance assistance related to regulations issued by the EPA, OSHA, and the IRS. Responding to comments from the small business community, Senator Burns developed the “Small Business Environmental Assistance Pilot Programs” amendment. The pilot would establish an Advisory Committee on Small Business Environmental Assistance Programs to review existing environmental compliance assistance programs and to recommend the future course for such programs. Second, the Small Business Administration would be authorized to establish a demonstration grant program, based on the recommendations and strategy developed by the Advisory Committee, to provide four-year grants to certain small business development centers to provide environmental

compliance assistance to small businesses in partnership with existing programs.

*Committee Action*

Chairman Bond accepted Senator Burns' amendment on September 15, 1998, when the Committee marked up H.R. 3412, the Chairman's Year 2000 Readiness and Small Business Programs Improvement Act. H.R. 3412 passed the Senate on September 30, 1998; however, the House did not consider the bill prior to adjournment.

#### **IV. SMALL BUSINESS TAX ISSUES**

##### **A. DEDUCTIBILITY OF HEALTH INSURANCE FOR THE SELF-EMPLOYED**

*Background*

One of the top concerns raised by small business owners during the 105th Congress continued to be the deductibility of health-insurance costs by the self-employed. At the start of the Congress, self-employed individuals could deduct only 40% of their health-insurance costs, while their corporate competitors were able to deduct the full cost of health insurance for their employees. This inequity and the competitive disadvantage caused by the tax law are significant reasons for the lack of health-insurance coverage for more than five million Americans in families headed by self-employed persons.

*Legislation*

In response to the concerns raised by the small business community, including the delegates to the 1995 White House Conference on Small Business, Chairman Christopher S. "Kit" Bond together with Senators Olympia Snowe and Don Nickles introduced the Home-Based Business Fairness Act of 1997 (S. 460) on March 18, 1997. The lead provision of this legislation called for full deductibility of health insurance for self-employed individuals beginning in 1997. With strong support from small business owners, the bill received considerable support in the Senate and was the subject of a hearing by the Senate Finance Committee's Subcommittee on Taxation and IRS Oversight on June 5, 1997.

The momentum for increasing the deductibility of health insurance for the self-employed continued to grow as the Senate took up tax legislation in the summer of 1997. During the debate, an amendment supported by the Chairman and Committee Members was added to the bill that would accelerate the deduction substantially. When it was signed into law on August 5, 1997, the Taxpayer Relief Act of 1997 included a provision that finally broke the 80% barrier and increased the deductibility of health-insurance costs for the self-employed to 100%. While the full deduction was phased in over ten years, the bill significantly increased the deduction in most of the intervening years.

Following on the success in achieving full deductibility as part of the Taxpayer Relief Act, the Chairman affirmed his commitment to accelerate the phase-in period at the earliest date possible. Momentum continued to build for further change throughout 1998, with



the Chairman and Committee Members working to identify opportunities to reach 100% deductibility at a faster rate. As the Second Session of the 105th Congress drew to a close, attention turned to an omnibus appropriation bill and the potential for including the self-employed health-insurance issue. With the strong support of the small business community, the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 moved the effective date for full deductibility from 2007 to 2003. In addition, the bill phased in the higher deductibility rates during the intervening period as follows: 60% in 1999 through 2001, 70% in 2002, and 100% in 2003. Chairman Bond applauded this provision for providing an additional deductible amount for the self-employed each year, but reaffirmed that full and immediate tax parity for the self-employed will continue to be a top priority in the 106th Congress.

#### *Committee Action*

The Committee held hearings that addressed the deductibility of health insurance for the self-employed on February 6, March 25, April 3, and October 22, 1997.

### B. HOME-OFFICE DEDUCTION

#### *Background*

A significant issue identified by home-based business owners is the home-office deduction. After the Supreme Court's 1993 decision, *Commissioner v. Soliman*, the only home-based businesses that could deduct the costs associated with their home office were those that saw their clients in the homes. As a result, the home-office deduction was not available to service providers like construction contractors, landscaping professionals, and sales representatives, who must by necessity perform their services outside of the home.

#### *Legislation*

The Home-Based Business Fairness Act, introduced by the Chairman and Senators Snowe and Nickles, incorporated the legislation that Senator Orrin Hatch introduced earlier in the year, which defines a home office to include one where the individual performs his or her essential administrative and management activities, such as billing and recordkeeping, provided that the business owner performs these activities on a regular, ongoing, and non-incidental basis and has no other office in which to perform them.

Home-based business owners across the country rallied in support of this legislation, arguing that the *Soliman* decision puts small businesses operated out of the owners' homes at a competitive disadvantage. A business owner that rents or buys a store front from which to operate his or her business can deduct the rent or depreciate the cost of the property as a business expense. Yet a home-based business, under the *Soliman* decision, cannot deduct the same costs because the office is in the owner's home. In addition, the decision ignores the current trend of more Americans working from home due to corporate downsizing, a desire to spend more time with their children, and entrepreneurship.

Restoration of the home-office deduction received strong support in the Senate, and after hearings on the Chairman's bill before the Senate Committee on Small Business and the Finance Committee's Subcommittee on Taxation and IRS Oversight, the issue was included in the Taxpayer Relief Act of 1997. As a result, beginning in 1999, a home-based business will be permitted to deduct the associated costs of an office in the owner's home if it is used for administrative or management activities of the business, provided that there is no other office where the owner conducts substantial administrative or management activities.

#### *Committee Action*

The Committee held hearings that addressed the home-office deduction on February 6, March 25, and April 3, 1997.

### C. INDEPENDENT-CONTRACTOR REFORM

#### *Background*

As in the 104th Congress, small businesses continued to urge Congress to clarify the definition of an independent contractor. Over the past three decades, the Internal Revenue Service (IRS) has relied on a 20-factor test based on the common law to determine whether a worker is an employee or an independent contractor. The test is a complex set of extremely subjective criteria with no clear weight assigned to any of the factors. As a result, a small business owner is not able to predict which of the 20 factors will be most important to a particular IRS agent, and finding a certain number of these factors in any given case does not guarantee the outcome.

Moreover, the IRS' determination inevitably occurs two or three years after the parties have determined in good faith that they have an independent-contractor relationship. A business recipient of the services forced to reclassify the independent contractor as an employee must pay the payroll taxes the IRS says should have been collected in the prior years, plus interest and penalties. In addition, the reclassified worker may have a portion of his or her business expenses disallowed by the IRS, which again results in additional taxes, interest and penalties. This situation is stifling the entrepreneurial spirit of many small business owners who find that they do not have the flexibility to conduct their businesses in a manner that makes the best economic sense and that serves their personal and family goals.

#### *Legislation*

The final feature of Chairman Bond's Home-Based Business Fairness Act was a simple and clear safe-harbor based on objective criteria for classifying a worker as an independent contractor. The bill also provides a bar against retroactive reclassifications by the IRS. In addition, the bill repeals section 1706 of the 1986 Tax Reform Act, which effectively bars an entire group of independent contractors from the protection available in section 530 of the Revenue Act of 1978. These provisions were also separately introduced as S. 473.

While the independent-contractor provisions of the Chairman's bill received strong endorsements from a wide variety of business groups, including the National Federation of Independent Business and the Small Business Legislative Council, they were not included in either the Senate or House version of the Taxpayer Relief Act of 1997, which were considered during the summer of 1997. Instead, the House Ways and Means Committee included an expansive safe-harbor that Representative Donna Christensen had introduced during the 104th Congress. The Senate version of the bill was silent on the issue of independent-contractor reform.

During the conference on the Taxpayer Relief Act, the Chairman and other Members of the Committee wrote to the conferees urging them to craft a bipartisan agreement on a safe-harbor for independent contractors and protection against retroactive reclassification. A number of small business groups also urged the House and Senate conferees to consider the Chairman's provisions in S. 460 as such a compromise solution. Regrettably, the Clinton Administration informed the conferees that its top objection to the tax bill was the House's independent-contractor reform provisions. Consequently, the final tax bill did not address this critical issue for entrepreneurs.

In March 1998, Senator Connie Mack introduced as a stand-alone bill the provisions from the Chairman's Home-Based Business Fairness Act concerning the repeal of section 1706. Repealing this provision of the 1986 Tax Reform Act would permit companies that hire certain technical workers, such as computer consultants, the same protection against IRS reclassification that has long been available to other companies. Again, due to the Administration's opposition, this provision was not addressed in the tax package that was ultimately included in the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, which was passed and signed into law at the end of the Congress.

#### *Committee Action*

The Committee held hearings that addressed the worker-classification issue on February 6, March 25, April 3, and October 22, 1997.

### D. IRS "STEALTH TAX" REGULATIONS

#### *Background*

At the start of the 105th Congress, the Treasury Department issued a proposed regulation that ostensibly defined who is a "limited partner" for employment tax purposes. The result of the proposed regulation, however, would be to subject all income received by many limited partners to self-employment tax (i.e., Social Security and Medicare taxes). As a result, many limited partners would have to pay self-employment taxes not just on their income from the services they perform, but also on the return they receive for investing in the partnership. The IRS' proposed regulations became known as the "stealth tax" regulations.

### *Legislation*

Following the promulgation of the proposed regulations, Chairman Bond wrote to IRS Commissioner Margaret Richardson on March 10, 1997, requesting an explanation for why the agency failed to conduct a regulatory flexibility analysis on the proposed regulations, which plainly impose a collection-of-information burden on small businesses. With no response from the IRS and the outcry from the small business community mounting, the Chairman again wrote to Commissioner Richardson on April 4, 1997, calling her attention to the fact that in addition to failing to comply with the Small Business Regulatory Enforcement Fairness Act, the proposed regulation's new definition of "limited partner" was tantamount to a tax increase on many limited partners without Congressional approval. Finally, on April 9, 1997, the Chairman together with 18 other Senators wrote to Treasury Secretary Robert Rubin requesting that the proposed regulations be withdrawn.

On June 5, 1997, Senators Richard Shelby and Chairman Bond introduced the Stealth Tax Prevention Act (S. 831), which would provide for Congressional review of regulations like the "stealth tax" regulations if they increase Federal revenue. While this bill was not addressed by the Senate, the Taxpayer Relief Act of 1997 included a moratorium on the Treasury Department issuance of the "stealth tax" regulations in final form in order for Congress to have adequate time to find a statutory solution to the issue. The moratorium expired on June 30, 1998, but as a result of the persistent pressure from the Chairman, it appears that the Treasury Department may refrain from issuing final regulations until Congress provides legislative guidance on the issue.

## E. IRS NURSERY REGULATIONS

### *Background*

On August 22, 1997, the Department of the Treasury issued temporary and proposed regulations concerning the uniform capitalization rules under section 263A of the Internal Revenue Code. Representatives of the nursery industry, which is dominated by small nursery growers, expressed concern that the new regulations would have a significant, negative impact on nurseries by narrowing the availability of a statutory exemption for certain "farming businesses" under the tax accounting rules. As a result, these small businesses would be subject to considerably greater regulatory burdens and compliance costs.

### *Legislation*

In response to these concerns, Chairman Bond wrote to Treasury Secretary Rubin and Acting IRS Commissioner Michael Dolan on September 19, 1997, requesting that the regulations be withdrawn for their failure to comply with the requirements of the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act and for their negative effects on small business. On October 14, 1997, IRS Chief Counsel Stuart Brown responded to the letter suggesting that the regulations merely clarify the definition of "farming business" but do not change it, and that because no small businesses will be affected, no regulatory flexibility anal-

ysis was required. The reaction from the nursery industry clearly indicated that the agency did not comprehend the number of small businesses that would be negatively affected.

In response to a flood of public comments, including the Chairman's letter, the IRS issued a formal announcement on November 28, 1997, stating that the regulations would not change who is eligible for the farming exemption relied upon by the nursery industry. The nursery industry declared the announcement to be a victory for its members. While Chairman Bond applauded the agency's decision, he pledged to review the final regulations when they are issued to ensure that the farming exemption is preserved.

#### F. ELECTRONIC FEDERAL TAX PAYMENT SYSTEM

##### *Background*

A provision of the 1993 North American Free Trade Agreement (NAFTA) legislation required the IRS to collect an increasing percentage of business taxes electronically. This new collection requirement will be phased in through 1999. To implement the requirement, the IRS developed the Electronic Federal Tax Payment System (EFTPS), which is based on the dollar amount of employment taxes that a business paid two years prior. Initially, EFTPS applied only to the largest of businesses. Beginning in 1997, however, businesses with employment tax liabilities in excess of \$50,000 were required to use the system, which caused enormous concern within the small business community. As a result, the Small Business Job Protection Act extended the date that these small businesses must start participating by six months to July 1, 1997.

##### *Legislation*

Early in the 105th Congress, Senator Nickles introduced legislation (S. 570) that would raise the threshold for businesses required to participate in the EFTPS program to \$5 million in payroll taxes, rather than the current \$50,000 level. This change would effectively make participation in the EFTPS system voluntary for most small businesses and would permit small enterprises to use EFTPS if it makes good business sense, but without being subject to a government mandate.

While this legislation was pending and as the extended deadline for small businesses to participate in EFTPS approached, Chairman Bond urged the IRS to waive penalties voluntarily for one year to permit Congress time to make statutory changes and allow small businesses time to adjust to EFTPS without the fear of penalties. He also called on the agency to use its statutory authority to create a more reasonable small business exemption from the EFTPS mandate. On June 2, 1997, the IRS agreed to part of the Chairman's request and announced that no penalties would be imposed before December 31, 1997, on small businesses required to use EFTPS. In addition, the Chairman succeeded in further extending the penalty moratorium through June 30, 1998, as part of the Taxpayer Relief Act of 1997. Prior to that date, the IRS again extended the moratorium through the end of 1998. Finally, on November 18, 1998, the IRS announced that it would again extend

the penalty waiver for an additional six months. As a result, small businesses can continue to use paper coupons through June 30, 1999, without incurring a 10% penalty as they make the transition to EFTPS.

In addition to ensuring that small businesses would not be penalized for trying to meet the requirements of EFTPS, the Chairman maintained a dialogue with representatives of the two Treasury Finance Agents (e.g., NationsBank and First National Bank of Chicago), which administer the EFTPS system. The Chairman's goal was to improve communications with the small business community and clarify the many misunderstandings about the EFTPS program. While S. 570 was not enacted during the 105th Congress, the Chairman continued his oversight of the EFTPS program in an effort to minimize the adverse impact on affected small businesses.

#### G. CAPITAL-GAINS TAX REDUCTION

##### *Background*

Relief from the capital-gains tax was identified as a significant issue for small businesses during the 105th Congress. Advocates of a rate reduction asserted that it would assist small business owners directly in their operations as well as provide a much-needed source of capital for new start-up companies and for expansion of existing enterprises, by encouraging investors to recognize built-in gains. The small business community also supported expansion of the special capital-gains tax rules for investments in small companies, especially modifications that would permit gains to be deferred so long as they are reinvested in another qualifying small business. Such a provision would provide successful entrepreneurs with an additional pool of capital in order to create a new success story.

##### *Legislation*

In response to the capital access concerns raised by the business sector, the Taxpayer Relief Act of 1997 reduced the capital-gains tax rate to 20% for most individual taxpayers (10% for individuals in the lowest tax bracket), and further reduced the rate to 18% (8% for individuals in the lowest bracket) beginning in 2001 for assets held for five years or more. At the insistence of the Clinton Administration, however, the new 20% rate applied only to gains from the sale of capital assets held for more than 18 months, rather than 12 months under prior law. This extension of the holding period resulted in enormous complexity and compliance burdens on all taxpayers with capital-gain transactions.

With the strong support of Chairman Bond, the Taxpayer Relief Act also expanded the 50% exclusion for individuals who sell stock in a small business acquired at original issuance and held for at least five years. Under the bill, the amount of gain that constitutes a minimum tax preference for purposes of the alternative minimum tax was reduced from 50% of the excluded gain to 42%. In addition, the bill permits an individual to roll over gains from the sale of stock in a qualified small business held for more than six months, provided that the individual uses the proceeds to purchase other qualified small business stock within 60 days of the sale. These

changes to the special treatment for capital gains on the sale of small business stock will encourage continued investment in small corporations and provide much-needed capital for their growth and development.

During the conference on the IRS Restructuring and Reform Act (H.R. 2676), the conferees added a provision to restore the capital-gains holding period to 12 months. The restored 12-month holding period was effective for transactions occurring after January 1, 1998, and is a major victory for small businesses in terms of reducing compliance costs while preserving the lower capital-gains tax rates.

#### *Committee Action*

The Committee held a hearing that addressed the capital-gains issue on October 22, 1997.

### H. ESTATE TAX REFORM

#### *Background*

The estate tax, or more accurately the “death tax,” continued to be a top concern for small businesses during the 105th Congress. This tax is increasingly devastating small, family-owned businesses and farms. Recent statistics indicate that over two-thirds of these enterprises are being forced to sell or liquidate their operations in order to pay this tax. As a result, less than one-third of family-owned businesses are passed on to a second generation, and only about one-eighth are passed to a third generation. The families are not the only losers in this case—every small, family-owned business and farm forced into liquidation by the “death tax” often has a direct, concrete effect on employment in the local community. Moreover, the justification for this tax has come under increased scrutiny since it generates only about 1% of the Federal revenues.

#### *Legislation*

During the First Session of the 105th Congress, Senator Charles Grassley introduced the Estate Tax Relief for the American Family Act of 1997 (S. 479). With the support of Chairman Bond, this legislation served as the basis for the estate-tax provisions included in the Taxpayer Relief Act, which incrementally raised the estate-tax exemption for all individuals from \$600,000 to \$1 million by 2006. The bill also provides a \$1.3 million exemption for qualifying family-owned businesses beginning in 1998. Both changes to the estate-tax law were a substantial victory for the small business community.

#### *Committee Action*

The Committee held hearings that addressed estate taxes on March 25, April 3, and October 22, 1997.

### I. ALTERNATIVE MINIMUM TAX REFORM

#### *Background*

Early in the 105th Congress, the IRS issued guidance concluding that certain installment sales by farmers would be treated as a

preference item for purposes of the alternative minimum tax (AMT). Due to the economic difficulties already plaguing the farming industry, the IRS' decision caused a considerable public outcry. Representatives of the farming industry argued that installment contracts are widely used for cash management purposes, and the IRS' new position would cause grave consequences across the country.

Small businesses in general also raised concerns about the growing complexity and compliance burdens of the AMT. With differing depreciation schedules and rules for other items, the AMT causes businesses to keep multiple sets of books and perform complex calculations when preparing their tax returns. In addition, because most small businesses do not have a full-time employee to handle these accounting and tax issues, most firms must hire outside professionals, which further increases the compliance costs for these businesses.

#### *Legislation*

In response to concerns raised by the farming industry, Senator Grassley introduced legislation (S. 181) that would overrule the IRS' new position on the treatment of installment sales by farmers. The Chairman and several other Members of the Committee cosponsored this legislation, and with the strong support of the farming industry it was included in the Taxpayer Relief Act of 1997.

The Taxpayer Relief Act also provided an exemption for small businesses from the corporate alternative minimum tax beginning in 1998. In order to qualify, the business must have gross receipts of less than \$5 million. The Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 also included relief from the AMT by exempting for tax year 1998 certain tax credits, such as the \$500 child tax credit, HOPE scholarship and Lifetime Learning tax credit, the adoption tax credit, the tax credit for the elderly and disabled, and the dependent-care tax credit. Together these changes will substantially reduce the burdensome recordkeeping and compliance burdens for many small enterprises and their owners.

### J. TAX RELIEF FOR FARMERS

#### *Background*

Due to a spate of weather-related problems and the global economic turmoil, farmers, who are predominantly small business owners, suffered considerable financial difficulties during the 105th Congress. In addition to calling for assistance through conventional farming programs, many small business farmers and ranchers urged Congress to provide relief through tax provisions that would help the industry weather the current crisis.

#### *Legislation*

In addition to AMT relief described above, the 105th Congress provided important tax relief for American farmers. During the First Session, in response to appeals from the farming industry, Chairman Bond and Members of the Committee joined in a letter to House and Senate conferees on the Taxpayer Relief Act of 1997,



urging them to include income-averaging provisions for farmers. As a result of these efforts, the Act permitted farmers to average their income from farming operations over the prior three years. The provision is effective for taxable years 1998, 1999, and 2000.

Early in the Second Session, Senator Conrad Burns introduced legislation (S. 1879), to extend permanently the income-averaging provisions enacted in the Taxpayer Relief Act. Senator Grassley also introduced the Farm and Ranch Risk Management Act (S. 2078), which would permit farmers to establish Farm and Ranch Risk Management (FARRM) accounts to ease the effects of bad harvest years. Under the bill, a farmer would be able to deduct contributions to a FARRM account up to 20% of his income. The account balance could be used during the following five years to support the farm, and distributions would be subject to tax in the year withdrawn.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 included a number of provisions that will provide tax relief for farmers across the country. In addition to making income-averaging permanent for farmers, the Act permitted farmers to carry back net operating losses (NOLs) for five years, instead of the two-year period applicable to other businesses. This provision will provide immediate help for farmers by permitting them to offset current losses against prior years' income and receive a tax refund.

The Act also provided that "production flexibility contract" payments under the Farm Bill will be subject to tax only in the year the payment is actually received, not when the farmer has a constructive right to them. This will provide relief in 1998 by deferring the tax by one year for farmers who may not actually receive their payments until 1999.

## K. PENSION REFORM

### *Background*

Pension reform continued to be an important issue for small businesses during the 105th Congress. With concerns rising about the long-term solvency of the Social Security Trust Fund, attention also focused on the complexity of the current rules governing private pension plans and ways to encourage more small enterprises, which continued to lag behind larger businesses, to offer retirement benefits to their employees.

### *Legislation*

Early in the First Session, Senator William Roth, together with Chairman Bond and other Members of the Committee on Small Business, introduced the Savings and Investment Incentive Act of 1997 (S. 197). The bill served as the basis for a number of provisions in the Taxpayer Relief Act of 1997 concerning individual retirement accounts (IRAs), including an increase in the income limits for individuals making deductible contributions to IRAs. The Act also repeals the active-participation rule under previous law that precludes one spouse, who is not covered by an employer-sponsored pension plan, from making deductible contributions to an IRA if the other spouse is covered by an employer-sponsored plan.

The Taxpayer Relief Act also includes the provisions from S. 197 that create “IRA Plus Accounts,” contributions to which are not deductible but the earnings in which can be withdrawn free of tax if the account is open for at least five years and the owner reaches the age of 59½. These accounts have subsequently become known as Roth IRAs. In addition, the Act includes provisions from S. 197 that permit penalty-free withdrawals from IRAs for first-time home buyers and for educational expenses.

Senator Judd Gregg also introduced pension legislation during the First Session. The Women’s Investment and Savings Equity (WISE) Act of 1997 (S. 620), included reforms to promote pension participation especially by women. In particular, the bill called for the elimination of the active participation rule for spouses covered by employer-sponsored pension plans, which was later included in the Taxpayer Relief Act of 1997. In addition, the WISE Act would permit retirement contributions to be made while an individual is on maternity or paternity leave and would permit “catchup contributions” by parents returning to work after periods of non-participation in a pension plan.

At the close of the First Session, the Savings Are Vital to Everyone’s Retirement (SAVER) Act was signed into law. This legislation called for several national summits on retirement savings, the first of which was held in 1998. In part, the bill called on the summit participants to focus on pension reform for small businesses. Chairman Bond recommended several individuals to serve as delegates to the summit, and Senate Majority Leader Trent Lott ultimately appointed four of Chairman Bond’s six nominees. The summit was held June 4 and 5, 1998, and provided recommendations for improving the retirement savings system in this country.

## L. IRS RESTRUCTURING AND REFORM

### *Background*

On June 25, 1997, the National Commission on Restructuring the Internal Revenue Service presented its report detailing the finding and recommendations of the Commission’s year-long examination of the IRS. The report described an agency sorely in need of reorganization and of modernization with regard to its computer equipment and procedures. The Senate Finance Committee highlighted these difficulties at the IRS during three days of hearings, held in September 1997. These hearings focused national attention on abusive behavior by IRS employees against taxpayers. Additional hearings were held by the Finance Committee in May 1998, which examined complaints by taxpayers, including small businesses, about the agency’s conduct and failure to respect the rights of taxpayers.

### *Legislation*

Following the release of the National Commission on Restructuring the Internal Revenue Service’s report, Senators Bob Kerrey and Charles Grassley introduced the Internal Revenue Service Restructuring and Reform Act of 1997 (S. 1096), which provided significant reforms to the operation of the IRS and improvements to the taxpayer rights provisions in the tax code. Later in October

1997, the House of Representatives passed companion legislation, and the Clinton Administration reversed its long-standing opposition to the bill.

With Senate consideration of the IRS reform legislation deferred until early 1998, Chairman Bond sent a letter to a wide range of small business organizations requesting their ideas on how the IRS could be restructured to serve all taxpayers better and seeking proposals for improving taxpayer rights. In addition, the Committee held hearings on IRS restructuring and reform in February and March of 1998, at which witnesses testified about the enormous obstacles that taxpayers face when dealing with the IRS. The witnesses also evaluated a number of proposals and made recommendations for improving taxpayer rights for small business owners.

In response to the hundreds of individuals and small business owners who called and wrote with suggestions and the Committee's hearings, Chairman Bond developed a package of proposals to provide relief for a broad spectrum of taxpayers, from single parents and married couples to small business owners and farmers. Specifically, the Putting the Taxpayer First Act (S. 1669) included proposals for restructuring the IRS, improving taxpayer rights, and expanding electronic filing of tax and information returns.

A significant provision of the bill called for restructuring the IRS along customer lines so that taxpayers with similar characteristics and needs, such as individuals, small businesses and the self-employed, and large companies would be able to go to an IRS service center dedicated to them and with personnel specially trained in issues relevant to them. On January 28, 1998, IRS Commissioner Charles Rossotti announced that the IRS would implement a customer-based reorganization along the lines suggested by Chairman Bond.

Later in March, the IRS announced that it would implement another provision of the Chairman's Putting the Taxpayer First Act, namely an advisory board to help the agency with plans to expand electronic filing. In a letter to IRS Commissioner Rossotti, Chairman Bond praised the proposal and urged the Commissioner to implement two other provisions from his bill. The first would ensure that electronic filing remains a voluntary option for taxpayers, not another government mandate. The second would require the IRS to comply with the procedural safeguards of the Regulatory Flexibility Act of 1980, and the 1996 amendments in Senator Bond's Small Business Regulatory Enforcement Fairness Act (known as the Red Tape Reduction Act), when preparing strategic plans and regulations on electronic filing. These statutes require the IRS to conduct small business outreach, analyze the impact of regulations on small entities, and minimize those impacts whenever possible.

The Finance Committee marked up the Internal Revenue Service Restructuring and Reform Act (H.R. 2676) at the end of March 1998. Chairman Roth's mark added several provisions from Chairman Bond's "Putting the Taxpayer First Act." The final legislation, which was signed into law on July 22, 1998, contained a substantial number of provisions from Chairman Bond's bill, including a requirement that the IRS restructure its operations to serve specific groups of taxpayers with similar characteristics and needs;

greater due process protections for taxpayers to guard against unreasonable seizures by the IRS; expansion of the current attorney-client privilege of confidentiality to cover accountants and other tax practitioners who provide tax advice; reform of the penalty and interest rules; a requirement that the IRS establish an independent administrative appeals process for taxpayers; a prohibition against the IRS contacting third parties, such as a business' customers or suppliers, without notifying the taxpayer first; and a prohibition on communications between an appeals officer and the IRS auditor or collection agent handling the case without permitting the taxpayer to be present.

The legislation also included Chairman Bond's provision stating that a taxpayer may recover attorney's fees and costs when the IRS discloses information about the taxpayer without permission and when an IRS employee improperly browses a taxpayer's records. This provision clarified the Taxpayer Browsing Protection Act (S. 522), which was signed into law on August 5, 1997. That bill prohibited browsing of taxpayer records by employees of the IRS. Under the bill, any employee convicted of browsing will be subject to a fine of up to \$1,000 or imprisonment of up to one year, or both, and will be dismissed from employment with the IRS. The bill also requires the IRS to notify taxpayers whose records are the subject of browsing.

#### *Committee Action*

The Committee held hearings on IRS restructuring and reform on February 12 and March 2, 1998.

### M. FUNDAMENTAL TAX REFORM

#### *Background*

The momentum for fundamental tax reform continued to build throughout the 105th Congress, and small businesses played an important role in demonstrating the counterproductive effects of the current tax code. On September 22, 1997, the National Federation of Independent Business started a national campaign to end the Internal Revenue Code. This campaign ultimately led to one million signatures on a petition calling for the repeal of the current tax law and a fervent plea from small businesses across the country for a fairer tax system with lower cost and compliance burdens.

#### *Legislation*

In September 1997, Senator Tim Hutchinson introduced S. 1225, which would terminate the tax code by December 31, 2001. The bill also sets forth principles for a new tax system. Subsequently, Senator Sam Brownback introduced legislation (S. 1233) that would end the code by December 31, 2000, except self-employment and Social Security withholding. On November 10, 1997, Senator Hutchinson introduced S. 1520, which combined the two previous bills ending the tax code on December 31, 2001.

Based on these initiatives, Chairman Bond convened a hearing of the Committee on October 22, 1997, to examine how fundamentally reforming the current tax system would affect small businesses. The major small business groups testified at the hearing

and presented a spectrum of views about whether Congress should modify the existing tax code or completely replace it with a new system, such as a flat tax or national sales tax.

On June 17, 1998, the House approved legislation to terminate the tax code by December 31, 2002, provided that a replacement system is adopted by July 4, 2002. The Senate considered similar legislation as an amendment to the Fiscal Year 1999 Treasury/Postal Appropriations bill (S. 2312), although the amendment was ultimately defeated.

With the enactment of the IRS restructuring and reform legislation in 1998, the Chairman noted that H.R. 2676 was a solid step forward in protecting taxpayers but that the long-term problem remains for small businesses—the Internal Revenue Code is unduly complicated and imposes enormous, unnecessary burdens on taxpayers. To continue the efforts he started during the First Session to evaluate replacement tax systems and ways to simplify the current tax law, Chairman Bond sent letters to a variety of small business organizations requesting their input. In addition, the Committee established a suggestion box on its Internet home page to solicit ideas for fundamental tax reform. Hundreds of individuals and small business owners responded to these initiatives, providing important suggestions for enacting fundamental tax reform.

The Chairman also requested that the General Accounting Office (GAO) identify the filing and reporting requirements that place significant burdens on small businesses. In his July 20, 1998, letter Chairman Bond asked the GAO to comment on ways that these burdens could be reduced or eliminated without compromising overall compliance with the tax code. Although a long-term project, this request is anticipated to result in GAO recommendations that can be used to promote improvements at the administrative level and as the basis for future legislative initiatives.

#### *Committee Action*

The Committee held a hearing on fundamental tax reform and small business on October 22, 1997.

### N. INTERNET TAX FREEDOM ACT

#### *Background*

Throughout the 105th Congress, the Internet continued to develop as a new frontier for individuals and businesses in this country and around the world. Over the past several years, the growth of the Internet and the volume of business transactions over this electronic medium has expanded exponentially. By some estimates it will grow even faster in the years to come, playing an increasingly important role in the national and global economy. As a result of this explosive growth, many businesses, especially small entrepreneurs, have had to contend with a number of obstacles. Chief among them is the enormous number, complexity, and ambiguity of tax laws that could apply to business transactions over the Internet. According to some estimates, a business could be subject to as many as 30,000 taxing jurisdictions just for doing business over the Internet.

Early in the 105th Congress, support began to build for a moratorium on multiple and discriminatory taxation of Internet commerce. With small firms playing a major role in this new marketplace, the issue took on heightened importance for the small business community.

### *Legislation*

Senator Ron Wyden introduced the Internet Tax Freedom Act (S. 442) in March 1997, and Senator Gregg introduced the Internet Fairness and Interstate Responsibility Act (S. 1888) the following year. Senator Wyden's legislation served as the basis for the legislation reported by the Senate Commerce Committee and the Finance Committee during the Second Session.

While the Commerce and Finance Committees' version of the Internet Tax Freedom Act differed in the details, both called for a moratorium on state and local taxation of Internet access (e.g., a monthly service provided by companies like America Online) as well as on multiple and discriminatory taxes on electronic commerce (i.e., additional or specific taxes imposed on electronic commerce that are not levied on other forms of commerce such as mail order sales). Each version also established a commission to make recommendations to Congress on Internet taxation by state and local governments as well as on international taxation and international trade issues. The commission is to include representatives of the Federal government, state and local governments, businesses engaged in electronic commerce, and consumer groups.

When the Senate considered the Internet Tax Freedom Act in September, Chairman Bond proposed an amendment to the managers that would specifically designate that small business be included as a representative of the electronic commerce industry on the commission. The managers accepted the amendment, and it was unanimously approved by the Senate. The Chairman also supported an amendment to include a representative of local retail businesses on the commission, which was approved. The legislation was passed by a vote of 96 to 2 on October 8, 1998.

Because of the pending adjournment and differences with the House version of the Act, the Senate-passed Internet Tax Freedom Act was included as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (H.R. 4328). This legislation, which provided for a three-year moratorium on state and local taxation and a 19-member commission (including a small business representative as proposed by Chairman Bond), was signed into law on October 21, 1998.

## O. EXTENSION OF EXPIRING PROVISIONS

### *Background*

Several provisions of the tax code were due to expire during the 105th Congress. Small businesses historically have derived important benefits from a number of these provisions, including the exclusion for employer-provided educational assistance for undergraduate education, the research and development tax credit, the work-opportunity tax credit, and the welfare-to-work tax credit. The Committee heard from many small business owners and advo-

cacy groups throughout the Congress urging continuation of these important tax provisions.

#### *Legislation*

The Taxpayer Relief Act of 1997 extended several expiring tax provisions that are important to small business. Specifically, the bill extended the exclusion for employer-provided educational assistance for undergraduate education until June 1, 2000. The bill also extended the research tax credit, the deduction for contributions of stock to private foundations, and the work-opportunity tax credit, each through June 30, 1998. In addition, the bill made permanent the tax credit for orphan drug testing.

Subsequently, the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act again extended several of these popular provisions of the tax code that had expired, or would do so soon. The Act retroactively restored the research and development tax credit, the work-opportunity tax credit, and the welfare-to-work tax credit through June 30, 1999. The Generalized System of Preferences and the Trade Adjustment Assistance program were also extended through the same date. The Act also made permanent the fair market value deduction for contributions of appreciated stock to private foundations.

### P. PAYROLL TAX RELIEF

#### *Background*

One of the greatest financial burdens borne by small businesses under the current tax law is the payroll tax. Specifically, these taxes are the employer's matching contribution to the Social Security and Medicare taxes withheld from employees' wages. These taxes constitute an enormous fixed cost, which can be reduced only by cutting salaries or eliminating employees. Moreover, the self-employed are even harder hit since they must pay both the employer's and employee's share of these taxes, which amount to 15.3% of their gross revenue. Small businesses have also repeatedly stressed that the filing requirements that come with payroll-tax reporting cost them excessive amounts of time and money to ensure that they are in compliance.

#### *Legislation*

On April 15, 1997, Senator John Ashcroft reintroduced the Working Americans Wage Restoration Act (S. 579), which allows a deduction from adjusted gross income for payroll taxes paid by employees through wage withholding and increases the deduction for self-employment taxes. Critics of the bill argued that its enormous cost could not be justified as consistent with the overriding effort to achieve and maintain a balanced Federal budget. The Senate did not consider this bill during the 105th Congress.

At the Committee's October 22, 1997, hearing on fundamental tax reform, several witnesses urged that efforts to reform the tax code and restructure the Social Security system must keep in mind the enormous burden that payroll taxes place on small employers and the self-employed.

## V. WORKPLACE ISSUES

### A. OSHA REFORM

#### 1. OSHA'S COOPERATIVE COMPLIANCE PROGRAM

##### *Background*

In October of 1997, Chairman Bond met with Charles Jeffress, then the nominee to be Department of Labor Assistant Secretary for Occupational Safety and Health, and sent a follow-up letter to him regarding small employers' concerns about the Occupational Safety and Health Administration's (OSHA) Cooperative Compliance Program (CCP). Chairman Bond urged OSHA to work with employers seeking in good faith to comply with OSHA standards and to reduce occupational injuries and illnesses.

On January 21, 1998, the U.S. Chamber of Commerce, joined by several other trade associations, filed a suit in Federal court challenging OSHA's authority to implement the CCP, asserting that OSHA had not conducted an appropriate rulemaking that provided notice and opportunity for comment when developing the CCP enforcement strategy targeting specific work sites for participation and possible inspection. The U.S. Court of Appeals for the D.C. Circuit granted a motion to stay the implementation of the CCP on February 17, 1998 (the deadline for employers to advise OSHA of whether they accepted OSHA's "invitation" to participate in the CCP) pending the court's decision on the merits of the suit. Oral arguments were scheduled for December 1998. OSHA is currently conducting inspections in accordance with its interim strategy, which the court ruled on April 6, 1998, was not subject to the stay.

#### 2. ERGONOMICS

##### *Background*

OSHA's intention to issue an ergonomic standard continued to cause small employers great concern during the 105th Congress. Early in the year, House Appropriations Committee Chairman Bob Livingston secured discretionary funding for the National Academy of Sciences (NAS) to study existing research on ergonomics and the workplace. In April, Chairman Christopher S. "Kit" Bond joined Senators Judd Gregg, Kay Bailey Hutchison, Don Nickles, Slade Gorton, Larry Craig and Lauch Faircloth in a letter asking Senator Arlen Specter to remove his objections to the study. Due to Senator Specter's objections, the study was not conducted, and the NAS and the National Research Council instead held a two-day seminar on ergonomics on August 21-22, 1998.

##### *Committee Action*

On September 3, 1998, at the full Committee markup of the Fiscal Year 1999 Labor-HHS Appropriations bill, Chairman Bond supported Senator Gregg's amendment to provide \$890,000 for NAS' Institute of Medicine to conduct a review of all available scientific literature examining the cause-and-effect relationship between repetitive tasks in the workplace and musculoskeletal disorders. The vote produced a 14 to 14 tie, preventing adoption of the language. However, during negotiations on the Fiscal Year 1999 Omnibus Ap-



appropriations bill, the conference agreed to House language that called for a NAS study on ergonomics. As signed into law on October 21, 1998, the Act included \$890,000 for the NAS study, although it did not require that the Institute of Medicine conduct the study. OSHA is expected to issue its proposed rule on ergonomics in August 1999, which is prior to completion of the NAS study.

## B. LABOR-MANAGEMENT RELATIONS

### 1. NLRB REFORM LEGISLATION

#### *Background*

In September 1995, the National Labor Relations Board (NLRB) initiated a rulemaking, which it has since abandoned, that would have made it easier to approve requests for designation of single-site bargaining units without a hearing. The business community opposed the rulemaking.

#### *Legislation*

Chairman Bond cosponsored legislation that would codify current practices to require the NLRB to conduct a hearing to consider a petition for approval of a single-site bargaining unit. The bill would require the NLRB to consider specific factors to determine the appropriateness of a single-site bargaining unit when multiple sites are involved and there is no stipulation or consent as to the appropriateness of a single unit. With the support of Senator Bond, Congress imposed restrictions on the NLRB so that no funds appropriated in Fiscal Years 1996, 1997, or 1998 could be used for the rulemaking.

### 2. UNION SALTING

#### *Background*

“Salting” is a technique used by unions in organizational and other types of campaigns. Union agents, or “salts,” apply for jobs with non-union employers. If hired, the salt attempts to convince the employees to join the union and tries to generate unfair labor practices against the employer. If the salt is not hired, he or she files an unfair labor practice complaint with the NLRB alleging the employer failed to hire the salt because of union affiliation.

#### *Legislation*

Chairman Bond was a cosponsor of the Truth in Employment Act of 1997 (S. 328) and Senator Tim Hutchinson’s revised version, S. 1981, to amend the National Labor Relations Act (NLRA) to prohibit salting. Chairman Bond supported the bills in order to restore balance between the rights of workers and employers. S. 1981 would prohibit controversial salting campaigns used by some unions to impose economic harm to non-union employers, while maintaining the right of all workers to choose whether or not to be represented by a union. Under the bill, only employees and applicants seeking to work in good faith would be entitled to the protections provided under the NLRA. On September 14, 1998, S. 1981 was pulled from the Senate floor after a 52 to 42 vote on a cloture

motion, falling eight votes shy of the 60 votes needed on the motion.

### 3. MINIMUM WAGE

#### *Legislation*

With the support of President Clinton, Senator Ted Kennedy introduced legislation to increase the minimum wage to \$6.15 by January 1, 2000. Having sought to provide targeted relief to offset the burdens of an increased minimum wage on small business during the 1996 debate, Chairman Bond again articulated the concerns of small businesses regarding the impact this proposal would have on the economy and job creation. Senator Kennedy offered his minimum wage proposal as an amendment to the bankruptcy bill on September 22, 1998. A motion to table the Kennedy amendment was agreed to by a vote of 55 to 44.

### C. DRUG-FREE WORKPLACE

#### *Background*

The Drug-Free Workplace Act (H.R. 3853) is a bill to initiate a demonstration program designed to aid small business in the establishment of drug-free workplace programs through Fiscal Years 1999 and 2000 and to encourage states to offer other incentives for the same. The Committee has been aware that the abuse of drugs and alcohol in the workplace is a significant hazard to working Americans and a serious drain on the economy in terms of lost productivity, increased health costs and wasted potential. Small businesses employ the vast majority of American workers.

#### *Legislation*

H.R. 3853 authorizes the Small Business Administration to award grants to intermediary organizations to provide technical and financial assistance to small businesses to establish drug-free workplace programs. The bill authorizes \$10 million over two years, of which \$1 million or 10% of the funds appropriated can be used by small business development centers to assist employers in establishing drug-free workplace programs.

On June 24, 1998, H.R. 3853 was received in the Senate after passing the House of Representatives, and was referred to the Senate Committee on Small Business. On September 15, 1998, the Committee considered H.R. 3853. Senator Paul Coverdell, who was the sponsor of the Senate companion bill, S. 2203, offered an amendment in the nature of a substitute. H.R. 3853 as amended was approved by a unanimous vote of 18 to 0. The Drug-Free Workplace Act was included in the Omnibus Appropriations Act of 1999, which was signed into law on October 21, 1998 and provided \$4 million for the program in Fiscal Year 1999.

## **VI. ACCESS TO CAPITAL: SMALL BUSINESS ADMINISTRATION PROGRAMS**

### **A. 504 CERTIFIED DEVELOPMENT COMPANY PROGRAM**

#### *Background*

Over the last several years, the Committee has devoted considerable attention to the 504 Certified Development Company program. One of the main concerns has been reports and testimony from the Small Business Administration (SBA) and the Office of Management and Budget (OMB) about low recoveries made by the SBA following a default by the borrower under the 504 loan program. Under current law, the SBA liquidates and forecloses almost every loan made under the 504 loan program. In 1996, in response to the continuing problem of the SBA obtaining low levels of recoveries on 504 loans, Chairman Christopher S. "Kit" Bond sponsored the Small Business Programs Improvement Act included in Public Law 104-208. Among other provisions, this legislation established a pilot program permitting approximately 20 certified development companies (CDCs) to liquidate loans they originated.

During the Committee's review of the President's Fiscal Year 1999 budget request for the SBA, the Committee received testimony that the CDCs have proven capable of performing liquidation and foreclosure activities under the pilot liquidation program. The Committee also received testimony that, because the CDCs do not have permanent authority to engage in liquidations, the SBA has not credited the recoveries accomplished by the CDCs under the pilot program in subsidy rate calculations for the 504 loan program. This failure to credit recoveries received by the CDCs causes losses to be overestimated in such calculations.

#### *Legislation*

Based on these concerns, on July 31, 1998, the Chairman introduced the Small Business Programs Restructuring and Reform Act of 1998 (S. 2407). Section 5 of the bill would have made the pilot liquidation program permanent by requiring the SBA to permit certain CDCs to foreclose on and liquidate defaulted loans that they have originated under the 504 loan program. The National Association of Development Companies strongly endorsed Section 5 of S. 2407.

At a Committee markup on September 15, 1998, the Small Business Restructuring and Reform Act of 1998 was included in the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412) that the Committee reported by a vote of 18-0. The Senate passed H.R. 3412 by unanimous consent on September 30, 1998. The House of Representatives took no action on the Senate-passed version of H.R. 3412.

### **B. SMALL BUSINESS INVESTMENT COMPANY PROGRAM**

#### *Background*

In 1958, Congress created the Small Business Investment Company (SBIC) program to help small business owners obtain investment capital. Forty years later, small businesses continue to expe-

rience difficulty in obtaining investment capital from banks and traditional investment sources. SBICs are frequently their only sources of investment capital. In 1992 and 1996, the Committee worked closely with the SBA to correct earlier deficiencies in the law in order to ensure the future of the program. Today, the SBIC program is expanding rapidly in an effort to meet the growing demands of small business owners for debt and equity investment capital.

The SBIC program lends government-guaranteed venture capital to SBA-licensed SBICs, which is matched with private capital and invested in small businesses. In 1996, the Committee completed work on the Small Business Investment Company Improvement Act of 1996 (S. 1784), which was signed into law on September 30, 1996 (P.L. 104-208). This legislation made significant improvements in the management of the SBIC program designed to enhance its safety and soundness and reduce the risk of loss to the Federal government.

#### *Legislation*

The Committee's efforts to improve the SBIC program and to attract well-managed and well-funded SBICs to increase the availability of investment capital for small business owners continued in 1997. The Small Business Reauthorization Act of 1997 (P.L. 105-135) made important changes in the SBIC program to permit manageable program growth while strengthening the SBA's oversight of the program. The law gives the SBA the option to make five-year leverage commitments, conforming the program to typical investment strategy patterns. In addition, the law permits the SBA to use fees collected from the SBICs for licensing and examinations to offset the agency's costs of performing these necessary functions.

On September 30, 1998, the Senate passed unanimously the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412), which had earlier passed the House of Representatives as a bill making three technical changes to the SBIC program. All three changes were included in an expanded version of H.R. 3412 and were approved by the Senate. The first change would have removed a requirement that at least 50% of the annual program level of the approved participating securities under the SBIC program be reserved for funding SBICs having private capital of not more than \$20 million. The requirement has become obsolete following the SBA's imposition of its leverage-commitment process and Congressional approval for the SBA to issue five-year commitments for SBIC leverage.

The second House change to the SBIC program would have clarified the rules for the determination of an eligible small business or small enterprise that is not required to pay Federal income tax at the corporate level, but that is required to pass income through to its shareholders or partners by using a specified formula to compute its after-tax income.

The third House provision would have required the SBA to issue SBIC guarantees and trust certificates at periodic intervals of not less than twelve months. The current requirement is six months. This change will give maximum flexibility for the SBA and the

SBIC industry to negotiate the placement of certificates that fund leverage and obtain the lowest possible interest rate.

When the Committee marked up H.R. 3412, it approved a relatively small change in the operation of the program. This change, however, would help smaller, small businesses to be more attractive to investors. The SBICs would be permitted to accept royalty payments contingent on future performance from companies in which they invest as a form of equity return for their investment.

The SBA already permits the SBICs to receive warrants from small businesses, which give the investing SBIC the right to acquire a portion of the equity of the small business. By pledging royalties or warrants, the small business would be able to reduce the interest that would otherwise be payable by the small business to the SBIC. Most importantly, the royalty feature provides the smaller, small business with an incentive to attract SBIC investments when the return may otherwise be insufficient to attract venture capital.

During the Committee's consideration of H.R. 3412, it approved an amendment to increase the program authorization levels to fund participating securities. In Fiscal Year 1999, the authorization level would have increased from \$800 million to \$1 billion; in Fiscal Year 2000, it would have increased from \$900 million to \$1.2 billion. The two increases were approved by the Committee based on reports that demand in the SBIC program was growing at a rapid rate, and higher authorization levels are necessary if the SBIC program is going to meet the demand for investment capital from the small business community.

After Senate passage of H.R. 3412, the House of Representatives was not able to consider the bill with the Senate amendments prior to the adjournment of the 105th Congress. It was understood, however, that the House Committee on Small Business intended to take up the SBIC provisions contained in H.R. 3412 as passed by the Senate early in the 106th Congress.

#### C. SBAEXPRESS AND LOWDOC PILOT LOAN PROGRAMS

##### *Background*

On September 18, 1998, the SBA and the President announced the expansion of two pilot lending programs, SBAExpress and LowDoc, administered by the SBA under its 7(a) loan program. Among other changes, the SBA raised the maximum loan amount for the two pilot programs to \$150,000 from \$100,000 and significantly increased the number of lenders eligible to participate in the SBAExpress program by permitting most preferred lenders and certain certified lenders to originate SBAExpress loans. The SBAExpress and LowDoc pilot programs account for one-eighth and one-quarter of all loan volume under the 7(a) program, respectively.

Following the SBA's announcement of the expansion of these programs, Chairman Bond sent a letter to the SBA Administrator, Aida Alvarez, on September 28, 1998, expressing concern about the expansion of these pilot programs without providing prior notice to the Committee. These pilot programs are not specifically authorized by statute, and the SBA has issued no regulations governing

them. As a result, the SBA is able to make changes to the programs without comment by interested parties, circumventing the Administrative Procedure Act, the Regulatory Flexibility Act and the Red Tape Reduction Act (P.L. 104–121). Moreover, such changes may affect the subsidy rate of the 7(a) program, which may significantly affect the program level established by Congress.

Current law does not require the SBA to perform an analysis of the effect any change in a pilot program, or the initiation of a pilot program, will have on the subsidy rate for the 7(a) program. The Committee has, in fact, received information that the SBA did not perform such a detailed analysis prior to expanding the LowDoc and SBAExpress pilot programs. Moreover, current law does not require the SBA to report to the Committees on Small Business of the Senate and House of Representatives on the performance of such programs. In his September 28, 1998, letter to Administrator Alvarez, Chairman Bond stressed that it is essential for the SBA to provide basic information on the operation of its pilot programs to the Committees on Small Business of the Senate and House of Representatives so they may properly perform their oversight responsibilities.

#### *Legislation*

Because of these concerns, Chairman Bond introduced the Year 2000 Small Business Readiness Act (S. 2372), which contains two reporting requirements relating to pilot programs under the 7(a) program. First, S. 2372 would require the SBA to report to the Senate and House Committees on Small Business prior to making any changes to a pilot program it administers under the 7(a) loan program or the initiation of any pilot program under the 7(a) program, if such change or initiation may affect the subsidy rate estimates for the 7(a) program. Second, the legislation would require the SBA to report to the Senate and House Committees on Small Business on the number and amount of loans made under all pilot programs commenced under the 7(a) loan program; the number of lenders participating in such programs; and the default rate, delinquency rate, and recovery rate for loans made under such pilot programs.

As noted above, S. 2372 was included in the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412) marked up by the Committee on September 15, 1998. The Committee reported H.R. 3412 by a vote of 18–0. The Senate passed H.R. 3412 by unanimous consent on September 30, 1998. The House of Representatives took no action on the Senate-passed version of H.R. 3412.

### D. OVERSIGHT

#### 1. SBA'S LENDER EXAMINATION PROCEDURES

##### *Background*

Over the last several years, Chairman Bond has paid particular attention to the SBA's examination of lenders originating loans under the 7(a) program. The Chairman sponsored the Small Business Programs Improvement Act (SBPIA) which requires, among other matters, that the SBA perform annual or more frequent ex-

aminations of lenders participating in the Preferred Lender Program. These lenders are authorized to originate 7(a) loans without the SBA's prior review and, over the last two fiscal years, have originated approximately 50% of the dollar volume of loans in the 7(a) program.

On-site lender reviews are essential to ensure that all lenders participating in the 7(a) program are complying with the SBA requirements and are engaging in prudent lending practices. Without such reviews, it is much more difficult for the SBA to determine whether a lender's loan origination procedures are placing government funds at risk. At the time of the Committee's March 18, 1998, hearing on the SBA's Fiscal Year 1999 budget request, the SBA had not begun examinations of lenders as required by the SBPIA, even though such examinations were mandated in 1996. Accordingly, in conjunction with the Committee's March 18, 1998, hearing, Chairman Bond urged the SBA to commence such examinations promptly. The Chairman requested, and received, specific information from the Administrator on the SBA's schedule for completing examinations for each preferred lender and detailed information with respect to the SBA's plans on conducting such examinations. The SBA began conducting on-site reviews of preferred lenders in May 1998.

In addition, on June 11, 1998, the General Accounting Office (GAO) released a report requested by Chairman Bond entitled "Few Reviews of Guaranteed Lenders Have Been Conducted." Chairman Bond requested the report to determine how the SBA conducts on-site reviews to monitor participating lenders' compliance with the agency's 7(a) loan program policies and procedures, and what actions the SBA is taking to comply with the requirement under SBPIA that the agency implement a program to provide an annual review of each lender participating in the Preferred Lender Program.

The GAO report found that, until just prior to the report's publication, the SBA had not complied with its own operating procedures that require periodic monitoring of lenders originating government-guaranteed loans under the 7(a) program or complied with the examination requirements in the SBPIA. The report specifically provides that in the five SBA district offices reviewed by the GAO, the SBA had not conducted reviews of 96% of the lenders in those districts in the past five years. Moreover, the GAO found no evidence that 625 of the 744 lenders that had been in the 7(a) program for at least one year had ever been reviewed. The report, however, acknowledged that the SBA had recently begun a program to conduct on-site reviews of all preferred lenders so as to comply with the SBPIA. Because of this recent action, the report concluded that it is too early to tell how successful the program will be.

The GAO report also details that, in the last five years, SBA's Inspector General has conducted audits at only three Small Business Lending Companies (SBLCs), one audit consisting of a review of only three loans. SBA regulations require its Inspector General periodically to audit all SBLCs originating loans under the 7(a) program. SBLCs are lenders that originate small business loans under the SBA's 7(a) loan program but are not depository institu-

tions. As such, their lending activities and safety and soundness are generally not monitored by Federal or state banking regulators.

#### *Committee Action*

In conjunction with the Committee's March 18, 1998, hearing on the SBA's Fiscal Year 1999 budget request, Chairman Bond urged the SBA to promptly commence SBLC reviews by requesting from the Administrator information on the number of examinations the SBA Inspector General has completed in the last two years. The Chairman also requested that the Administrator explain in detail the SBA's plans to examine the safety and soundness of such lenders on a regular basis. The SBA commenced a program on September 28, 1998, to audit regularly the safety and soundness of licensees under the SBLC program, and the SBA has contracted with the Farm Credit Administration to conduct such audits. The Committee will continue to work with the GAO and the SBA Office of Inspector General to monitor SBA's efforts to examine regularly the lending practices and safety and soundness of SBLCs.

On October 26, 1998, Chairman Bond, along with Representative James Talent, Chairman of the House Committee on Small Business, sent a letter to Administrator Alvarez expressing concern that the SBA intended to expand the number of licensed SBLCs beyond the existing fourteen licensees. The letter stressed that because the SBA has only recently begun to audit the safety and soundness and lending activities of SBLCs, it is imprudent to expand the SBLC program prior to the SBA and the Committees evaluating the results of such SBLC audits and examinations. In response to this letter, Administrator Alvarez indicated that the agency will not lift the moratorium on licensing SBLCs. However, the Administrator confirmed that the SBA has formulated preliminary plans to license new nonbank lenders (titled "New Market Lending Companies") to originate loans under the 7(a) program, but that the agency intends to establish financial resource requirements that meet or exceed those currently in place for other 7(a) lenders. The Committee intends to watch and evaluate closely the SBA's efforts in this area.

## 2. ASSET SALES

#### *Committee Action*

As a result of pressure brought by the Committee and the OMB on the SBA since 1997, the SBA unveiled plans to conduct private sector sales of loans and other assets held by the agency. These sales, scheduled to commence in 1999, would include repurchased and defaulted notes, as well as real estate and other property securing such notes.

To assist the Committee in evaluating the SBA's asset sale efforts, on August 21, 1998, Chairman Bond sent a letter to Administrator Alvarez requesting reports commissioned by the SBA addressing sales of its assets in private markets. The reports received by the Committee detail the asset disposal method that will result in the highest net cash generation for the SBA, determine the optimum sale time for SBA assets, and contain estimates of the amounts that the SBA should obtain by selling such assets. If the



SBA fails to obtain an appropriate return for such assets, it may result in a higher subsidy rate for the applicable loan programs. The Committee will continue to monitor the SBA's asset sale efforts.

### 3. SECURITIZATION OF THE UNGUARANTEED PORTION OF 7(A) LOANS

#### *Background*

The Small Business Programs Improvement Act (SBPIA), enacted September 30, 1996, prohibits the sale of any unguaranteed portion of a 7(a) loan after March 31, 1997, until the SBA issues a final regulation that applies uniformly to depository institutions and other lenders and that sets forth the terms and conditions of such sales, including maintenance of reserve requirements and other safeguards to protect the safety and soundness of the 7(a) program. This provision was included in the statute because, while it appeared that market forces were adequately protecting investors of securitized unguaranteed portions of 7(a) loans, the SBA had not issued regulations requiring that lenders maintain a reserve to ensure that they retain significant exposure on the loans they originate.

On February 26, 1997, the SBA proposed a regulation in response to the SBPIA recommending that each lender (bank and nonbank) retain a continuing economic interest equal to 5% of the face value of each loan included in a securitization. The proposed regulation noted that nearly all respondents to the SBA's earlier advance notice of rulemaking recommended that lenders retain at least a 5% tangible economic interest in the total amount of a guaranteed loan. The SBA, however, did not finalize this proposed rule, but instead issued an interim rule on April 2, 1997, that permitted the agency to approve securitizations on a case-by-case basis. Despite not issuing a final rule in conformity with the SBPIA, the SBA continued to permit lenders to sell the unguaranteed portion of 7(a) loans under the interim rule. Moreover, the SBA continued to discriminate between bank and nonbank lenders by permitting, in 1997, an SBLC to securitize the unguaranteed portion of 7(a) loans without maintaining a 5% reserve to protect the SBA from loss, while requiring a Federally-regulated depository institution to maintain such a reserve. These actions were in clear defiance of the statutory requirement in the SBPIA.

#### *Committee Action*

On December 10, 1997, Chairman Bond sent a letter to Administrator Alvarez expressing grave concern over the SBA's failure to comply with the requirements of the SBPIA relating to securitization of the unguaranteed portions of 7(a) loans. The letter also questioned Administrator Alvarez regarding reports in the media that the SBA's approval of a securitization by an SBLC, without retention of a reserve, was deemed to be "politically fixed" by career officials at the SBA. Finally, the letter requested the SBA to suspend the securitization program until the agency had promulgated a final regulation in conformity with the SBPIA. Administrator Alvarez responded on December 17, 1997, that the SBA

would continue to approve securitizations on a case-by-case basis prior to issuing a final rule in compliance with the SBPIA.

Following this response, the Chairman sent a second letter to Administrator Alvarez on January 22, 1998, in which he re-emphasized his serious concerns about the SBA's management of the securitization program. Administrator Alvarez responded on February 2, 1998, stating that the SBA has been developing a "new rule" to govern the securitization program. In conjunction with the Committee's hearing on March 18, 1998, regarding SBA's proposed Fiscal Year 1999 budget, Chairman Bond questioned Administrator Alvarez several times regarding SBA's compliance with the securitization requirements in the SBPIA, as well as her intentions regarding approving securitizations of the unguaranteed portions of 7(a) loans prior to the issuance of a final rule.

On May 18, 1998, the SBA published a proposed rule that would permit all participating lenders to sell, securitize, sell a participating interest in or pledge the unguaranteed portion of 7(a) loans. The proposed rule requires a lender to retain a subordinated tranche on a securitization of unguaranteed portions of 7(a) loans that is equal to the greater of (i) twice the loss rate experienced on the lender's SBA loans over a ten-year period or (ii) 2% of the unguaranteed portion of the securitized loans. The industry has generally responded positively to this proposed rule, which is likely to be finalized in early 1999.

#### E. SMALL BUSINESS YEAR 2000 READINESS

##### *Background*

On June 2, 1998, the Committee held a hearing on two issues: problems faced by small businesses conducting electronic commerce (e-commerce) and the effect the Year 2000 (Y2K) computer problem will have on small businesses. The Y2K problem is a result of programmers over the years writing computer code that used only two digits to represent years. This means that certain computers and processors in automated systems will fail because such systems will not recognize the year 2000, but will mistake it for 1900.

At the hearing, the Committee received testimony that the companies most at risk from Y2K failures are small- and medium-sized industries, not larger companies. Witnesses testified that this anomaly is caused by two factors. First, many small companies have yet to realize the extent the Y2K computer problem affects their businesses. Second, many small companies may not have the access to capital to cure such problems before they cause disastrous results. The Committee also received information that only 15% of all businesses with less than 200 employees have even begun to inventory the automated systems that may be affected by this computer glitch, much less begun fixing such systems. Moreover, a study on Small Business and the Y2K Problem sponsored by Wells Fargo Bank and conducted by the National Federation of Independent Business found that an estimated 4.75 million small employers are exposed to the Y2K problem.

### *Legislation*

In response to the testimony at the hearing and to mitigate the effect on the economy that small business exposure to the Y2K problem may have, Chairman Bond introduced the Small Business Year 2000 Readiness Act (S. 2372) on July 30, 1998. The bill was cosponsored by Senators Robert Bennett, Olympia Snowe and Frank Lautenberg.

The legislation was intended to serve the dual purpose of providing small businesses with necessary capital to continue operating after January 1, 2000. It was also designed to make financial institutions and small firms more aware of the Y2K problem by providing a specific solution for financial institutions with small business customers that are not Y2K compliant. The legislation would have required the SBA to establish a limited-term loan program, which would sunset after October 31, 2001. Under that program, the SBA would guarantee 50% of the principal amount of a loan made by a private lender to assist small businesses in correcting Y2K computer problems with the loan amount capped at \$50,000. The guarantee limit and loan amount were designed to limit the exposure of the government and ensure that eligible lenders retain sufficient risk so that they make sound underwriting decisions. The legislation would have further permitted lenders to process and document Y2K loans using the same internal procedures they currently use on loans of a similar type and size not governed by a government guarantee, in the same manner as the existing SBAExpress pilot program.

The bill further provided that each lender designated as a Preferred Lender or Certified Lender by the SBA would be eligible to participate in the Y2K loan program. This would include approximately 1,000 lenders that have received special authority from the SBA to originate loans under the SBA's existing 7(a) loan program.

At a Committee markup on September 15, 1998, S. 2372 was included in Chairman Bond's Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412). The Committee reported H.R. 3412 by a vote of 18-0 and the Senate passed the bill by unanimous consent on September 30, 1998. The House of Representatives took no action on the Senate-passed version of H.R. 3412.

### F. PROPOSED 7(A) AND 504 LOAN PROGRAM CHANGES

#### *Committee Action*

The Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412), as reported by the Committee, contained changes to the 7(a) loan program and the 504 loan program. First, the bill would have required appraisals of real estate collateral for 7(a) and 504 loans by state licensed or certified appraisers only if more than \$250,000 of the loan proceeds are used to acquire, construct or improve real property. Currently, OMB requires all agencies that manage credit programs to ensure that all credit transactions over \$100,000 have an appraisal prepared by a state licensed or certified appraiser. The increase in the appraisal requirement threshold was adopted as an amendment sponsored by Senator John Kerry at the Committee markup. Chair-

man Bond supported the amendment following receipt of a letter from the SBA, approved by OMB, stating that it had no objection to raising the appraisal threshold amount.

Second, H.R. 3412 would have also repealed a provision requiring that the SBA pay a lender under the 7(a) loan program 100 basis points less than the interest rate on a loan when a lender is paid the guaranteed portion of a defaulted 7(a) loan. In 1996, Congress enacted this requirement anticipating that it would decrease subsidy costs of the 7(a) program substantially. This has not proved to be the case, and Chairman Bond supported the amendment to H.R. 3412 because the paperwork burden caused by this provision has been disproportionately high compared to the savings achieved. As noted above, the House of Representatives took no action on the Senate-passed version of H.R. 3412.

## **VII. WOMEN-OWNED BUSINESSES**

### **A. SURVEY OF WOMEN-OWNED ENTERPRISES**

#### *Background*

A top priority for women's business organizations was to ensure that the Commerce Department conduct a new Survey of Women-Owned Business Enterprises (SWOBE). This survey was jeopardized by the Administration's decision to have the Small Business Administration (SBA) pay for the survey rather than the Commerce Department. In 1998, the SBA obtained permission from Congress to reprogram \$1 million for the survey. The SBA also reprogrammed \$500,000 in Fiscal Year 1997 for the survey.

#### *Committee Action*

At the Committee's March 18, 1998, hearing on the President's Fiscal Year 1999 Budget Request for the SBA, Chairman Christopher S. "Kit" Bond inquired about the additional \$1 million being requested by the SBA for SWOBE. The Administrator and SBA staff responded that additional funds might be required in Fiscal Year 2000. In response to written questions submitted by the Chairman, the Administrator reported the cost for SWOBE to be: \$527,814 in Fiscal Year 1997; \$991,000 in Fiscal Year 1998; \$750,000 in Fiscal Year 1999; and \$500,000 for Fiscal Year 2000. Consistent with these estimates, the Fiscal Year 1999 Omnibus Appropriations Act provided a line-item of \$800,000 for SWOBE.

### **B. WOMEN'S BUSINESS CENTER PROGRAM**

#### *Background*

In preparation for reauthorizing the SBA, the Chairman focused attention on SBA programs serving women during a hearing on oversight of the SBA's non-credit programs. The National Association of Women Business Owners urged the Committee to consider ways to improve SBA programs to serve the needs of women better. Procurement, access to capital, and business education and training were again named as top priorities for women business owners.

### *Legislation*

In response to the comments provided by women business owners, on June 12, 1997, Chairman Bond joined Senators Pete Domenici and John Kerry as the lead sponsors of the Women's Business Center Act (S. 888). This legislation increased the authorization for Women's Business Centers from \$4 million to \$8 million, doubling the request submitted by the Administration. The bill also extended the number of years the Centers could be eligible to receive funding from three to five and enabled Centers currently in their third year to apply for an additional two years of eligibility.

Chairman Bond continued to demonstrate his commitment to the Women's Business Center program during the Second Session of the 105th Congress. The Women's Business Center program authorizes the SBA to award grants to locally-run Centers for business education training, including marketing, finance, and management assistance. In 1998, Chairman Bond introduced legislation to increase the authorization level for the program from \$8 million to \$12 million beginning in Fiscal Year 1999. With the support of the Association of Women's Business Centers, the legislation also included a requirement that the General Accounting Office (GAO) conduct a baseline and follow-up study on the SBA's administration of the program. The Chairman's bill was unanimously approved in Committee on September 15, 1998, and passed the Senate on September 30, 1998; however, the House did not consider the bill prior to adjournment. The Chairman will continue his efforts to strengthen and expand this program during the 106th Congress.

## **VIII. HUBZONES AND FEDERAL PROCUREMENT**

### **A. HUBZONE ACT OF 1997**

#### *Background*

During the 105th Congress, the Small Business Administration (SBA) began implementing the HUBZone program, which was enacted as Title VI of the Small Business Reauthorization Act of 1997. The SBA published its proposed HUBZone rules in the Federal Register of April 2, 1998. On May 1, 1998, Chairman Christopher S. "Kit" Bond submitted written comments to the SBA on the proposed rules, most notably concerning the SBA's "trial balloon" to limit HUBZone small businesses to those of at least 16 employees and no more than one-half of the maximum size standard normally applicable for a particular Standard Industrial Classification (SIC) code. Chairman Bond argued that the SBA did not have the authority to impose additional limitations beyond those written into the HUBZone statute. The SBA dropped its additional size standard ideas when it published final rules on June 11, 1998, noting Chairman Bond's argument in its "Section-by-Section Analysis" explaining the change. Conforming changes in the Federal Acquisition Regulation were published as an interim final rule in December 1998.

During 1998, it became apparent that the HUBZone legislation included some technical errors that, left uncorrected, could result in dramatically different interpretations of the law than that intended by the Congress. The most significant problems concerned

the Act's definition of "qualified census tracts" and "qualified non-metropolitan county." As expressed in Committee reports at the time the HUBZone Act was enacted, those definitions were to be mutually exclusive; thus, in metropolitan areas, HUBZones would be defined only at the census tract level, while in nonmetropolitan areas, the definition would be on a county-by-county basis. Drafting errors in the legislation omitted the restrictive language and misplaced one test (the unemployment test for nonmetropolitan counties). Thus, for example, Bronx County, New York, due to its high level of unemployment, would qualify as a "qualified nonmetropolitan county" despite its urban character. This counterintuitive result potentially undermines the program by diffusing the program's attempt to target areas most in need.

#### *Legislation*

To address this problem, along with some minor non-substantive changes, Chairman Bond included a package of technical corrections in the Small Business Programs Restructuring and Reform Act of 1998 (S. 2407), which he introduced on July 31, 1998. This package was included in the Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412) passed by the Committee on Small Business on September 15, 1998. The measure also passed the Senate by unanimous consent on September 30, 1998, but was not considered by the House before the 105th Congress adjourned.

### B. CONTRACT BUNDLING

#### *Background*

In 1988, President Reagan signed a bill setting a goal that 20% of the total value of Federal prime contracts be awarded to small businesses. In 1997, testimony and other evidence accumulated by the Committee outlined a series of actions by the Administration that could remove many prime contract opportunities from the reach of thousands of small businesses.

#### *Legislation*

The Committee included in the Small Business Reauthorization Act of 1997 (P.L. 105-135) a special subtitle that responds to the Federal government's practice of "bundling" or consolidating smaller contracts into very large contracts. Contract bundling often prevents small businesses from competing for contracts or ultimately obtaining them because of the size or geographic dispersion of the contract. This practice, intended to reduce short-term administrative costs, can result in a monopolistic environment with a few large businesses controlling the market supply.

The Small Business Reauthorization Act of 1997 focuses attention on this issue by clearly defining contract bundling. The Act also raised the government-wide goal for small businesses to 23% of prime contract dollars. Further, the law strengthens the role of the SBA to appeal decisions of Federal agencies that decide to bundle smaller contracts into larger contracts, including the right of the SBA Administrator to make an appeal directly to the head of the agency or department. The Act also established in law, for the

first time, that all Federal agencies report through the Federal Procurement Data System all contract actions involving bundled requirements with an anticipated contract award value exceeding \$5 million. This reporting requirement will permit the Committee to obtain accurate information on the number of contracts being diverted from small businesses to large businesses.

The new law also directed the SBA to publish proposed rules in the Federal Register not later than 120 days after enactment, which would have been April 1, 1998. Final rules were to be published within 270 days of enactment, or not later than August 29, 1998. Neither statutory deadline was met.

### C. REPORTING OF SMALL BUSINESS CONTRACTING STATISTICS

#### *Legislation*

Chairman Bond included in H.R. 3412 provisions to tighten Congressional oversight of Executive Branch reporting of small business contracting statistics. In April 1998, the Department of Energy's (DOE) Office of Inspector General issued a report criticizing the DOE's collection and presentation of its statistics on agency contracting with small business. Among other things, the DOE had inaccurately reported high goals and achievements for such contracting, by excluding the value of certain contract expenses from its base number of total prime contracts. Most disturbingly, these changes initially were approved by the SBA on the grounds that the DOE had a "unique situation" regarding these expenses. Although this approval was later revoked when the SBA was informed that the "unique situation" was not in fact unique, the SBA's initial approval and later revocation were not formally disclosed to the Congress, the Committee, or the public. As part of the small business legislation adopted by the Committee and approved by the Senate, provisions intended to put these matters on the public record were adopted. Negotiations with the SBA resulted in compromise language on this subject, which was incorporated into the bill through a floor amendment (S. Amdt. 3674) that was adopted by unanimous consent when H.R. 3412 was adopted, also by unanimous consent, on September 30, 1998.

#### *Committee Action*

At the invitation of the Committee on Energy and Natural Resources, Chairman Bond submitted written questions on the DOE's statistics reporting during the nomination hearings of Bill Richardson to be Secretary of Energy on July 22, 1998, and Gregory Friedman to be Inspector General of the Department of Energy on September 17, 1998. The responses of Secretary-Designate Richardson were unsatisfactory, as he argued in favor of DOE's position to exclude the contract expenses in question from the base of total contract dollars. He did, however, commit in general terms to increase small business contracting opportunities. Inspector General-Designate Friedman was asked more general questions about the role of the IG in monitoring these situations and he committed to a follow-up meeting with DOE management to review their responses to the April 1998 report.

## D. SMALL BUSINESS RESEARCH AND DEVELOPMENT

*Background*

In 1982, Congress established the Small Business Innovation Research (SBIR) program because small businesses are principal sources of innovation in the United States. In order to remain competitive in the global economy, the United States has historically depended heavily on innovation through research and development (R&D). Our dependence on small business for innovation is significant.

The SBIR program requires agencies with extramural R&D budgets of \$100 million or more to set aside not less than 2.5% of that amount for R&D conducted by small businesses. It is a three-phase program. Phase I is designed to determine the scientific and technical merit and feasibility of a proposed research idea. A Phase I grant award cannot exceed \$100,000. Phase II is designed to develop the idea further, taking into consideration such matters as the idea's commercialization potential. Phase II grant awards cannot exceed \$750,000. Phase III is the commercialization phase. It is funded by non-Federal funds for the commercial application of the technology or non-SBIR Federal funds for continued R&D under government contracts.

Ten years after Congress originally approved the SBIR program, it was re-authorized by the Small Business Research and Development Enhancement Act (P.L. 102-564, October 28, 1992). The principal purposes of the 1992 Act were to: (1) expand and improve the SBIR program; (2) emphasize the program's goal of increasing the private sector's commercialization of technologies; and (3) increase small business participation in the program by women-owned small business concerns and by socially and economically disadvantaged small business concerns.

The 1992 Act also established the Small Business Technology Transfer (STTR) program, a new pilot program. Congress intended to create an easy-to-use vehicle for moving ideas from research institutions to the marketplace where they can best benefit the U.S. economy. The STTR program accomplishes this goal by linking small businesses with creative ideas to universities, nonprofit scientific and educational institutions, and Federal laboratories. Under the STTR program, R&D that benefits our national defense, promotes health and safety, or improves our highways and airports can move from the early R&D state to the marketplace. The STTR program ensures that innovative ideas developed by universities and nonprofit organizations, in partnership with quality small businesses, serve an active role in building our nation's economy. The "Small Business Reauthorization Act of 1997" (P.L. 105-135) extended the STTR program for four years, through the end of Fiscal Year 2001.

The 1992 Act directed the General Accounting Office (GAO) to undertake two reports on the SBIR program. The first report was submitted to the Senate and House Committees on Small Business on March 8, 1995.

In April 1998, the GAO issued its second comprehensive report on the state of the SBIR program. Subsequently, in June 1998, the GAO addressed the report in testimony before the Committee. The



message was clear: this is a worthwhile program that is running very well. There are 10 Federal agencies that participate in the program, and the GAO concluded they are adhering to the program's funding requirements. Competition has been intense among small business R&D firms in response to solicitations from the 10 agencies. The GAO found, however, it was very rare for an agency to make an award when the agency received only one proposal in response to a solicitation.

The GAO report raised some concerns about the success of multiple-award recipients of SBIR grants. In particular, the GAO pointed out that the average levels of sales and additional developmental funding for the multiple-award recipients are lower than those for non-multiple-award recipients. On average, multiple-award recipients—sales are \$12,000 lower than those for non-multiple-award recipients, while the levels of additional developmental funding are almost \$90,000 lower for the multiple-award recipients.

The GAO's analysis of the Department of Defense's (DOD) data shows differences that are even more pronounced. Survey data from the DOD showed that annual sales are more than \$250,000 lower for multiple-award recipients, and the average levels of additional developmental funding for multiple-award recipients are more than \$175,000 lower than those for non-multiple-award recipients.

#### *Legislation*

The Year 2000 Readiness and Small Business Programs Restructuring and Reform Act of 1998 (H.R. 3412), as reported by the Committee, would have removed the sunset date for the SBIR program, effectively making the program permanent. Testimony before the Committee and the findings of the GAO clearly supported this action.

As approved by the Committee, the bill also required each agency subject to the SBIR program to use the same formula set forth by the Director of the Office of Management and Budget in calculating extramural budgets.

Members of the Committee continue to express their concern about the high concentration of SBIR awards in a small number of states, with nearly 80% of awards going to businesses located in six states. In 1997, the Congress approved a special program that directs the SBA to award grants for outreach activities in states where SBIR participation is low. The Committee, accordingly, included in H.R. 3412 a provision directing existing Federal outreach activities, such as the electronic commerce (e-commerce) resource centers and the procurement technical assistance centers, to conduct specific outreach activities to support the SBIR program funded out of their existing budgets. The Committee intends to continue to review closely the success of activities at the SBA and the agencies subject to the SBIR program to conduct effective outreach activities in states receiving small numbers of SBIR awards.

Although H.R. 3412 passed the Senate unanimously on September 30, 1998, the House of Representatives did not consider the bill before Congress adjourned for the year. It will be necessary for Congress to enact legislation in the 106th Congress extending the

SBIR program before the program terminates on September 30, 2000.

## IX. HEALTH CARE

### *Background*

Chairman Christopher S. “Kit” Bond led the fight to reduce the adverse impact of two Health Care Financing Administration (HCFA) regulations that had devastating effects on small businesses and small non-profits in home-health care. Language in the Balanced Budget Act (BBA) of 1997 directed HCFA to issue a series of regulations intended to curb the rising cost of home-health care and to rid the Medicare and Medicaid programs of firms engaged in fraud and abuse. HCFA, however, issued regulations in response to that Congressional directive that exceeded Congressional intent, driving many reputable home-health care providers out of business.

The first regulation was issued under Section 4312(b) of the BBA, which requires home-health care agencies to obtain a surety bond that is not less than \$50,000. In contrast, HCFA’s regulations required home-health agencies to obtain bonds for the greater of \$50,000 or 15% of their annual Medicare receipts. These bonds were essentially financial guarantees, requiring collateral or personal indemnification equaling 100% of the bond’s face value, intended by HCFA to ensure repayment of overpayments made by Medicare. With more than 85% of home-health care providers being small businesses, the bonds were unreasonably expensive and unobtainable. HCFA also ignored the procedural safeguards under the Administrative Procedure Act and the Regulatory Flexibility Act of 1980 in developing the rule by failing to issue a notice of proposed rulemaking prior to the final rule and failing to conduct an appropriate Regulatory Flexibility analysis.

HCFA’s Interim Payment System (IPS) regulation caused even greater uncertainty regarding the future availability of home-health care. The BBA required HCFA to develop an IPS to limit reimbursement for services provided on or after October 1, 1997. HCFA’s resulting IPS rule, however, was too severe, causing many home-health agencies to close their doors. In addition, HCFA’s progress on the more favorable prospective payment system (PPS), which was to be in place by October 1, 1999, was behind schedule.

### *Legislation*

On June 10, 1998, Chairman Bond introduced S. J. Res. 50, a resolution of disapproval to strike HCFA’s regulation to implement the surety bond requirement. S. J. Res. 50 was the first resolution introduced under Subtitle E of the Red Tape Reduction Act, known as the Congressional Review Act, that gained broad-based support in the Senate and House. With 60 Senate cosponsors, the resolution precipitated HCFA’s suspension of the surety bond rule pending completion of a General Accounting Office study and, potentially, the development of a new proposal. As the result of an agreement between HCFA and Chairman Bond and Senators Charles Grassley and Max Baucus, HCFA issued a Federal Register notice on July 31, 1998, suspending the deadline for compli-

ance with the surety rule. HCFA further agreed to not enforce the rule: (1) without providing at least 60 days notice and (2) not before February 15, 1999. That date was established as the Senators wanted to ensure that HCFA's actions would take place when Congress was in session and able to respond.

On July 15, 1998, Senator Bond introduced the Medicare Home-Health Care Beneficiary Protection Act of 1998 (S. 2354), to place a moratorium on the IPS pending the development of an alternate payment system. During the September 3, 1998, Committee markup of the Labor, HHS, Appropriations bill, Senator Bond offered his IPS bill as an amendment. Although he was forced to withdraw the amendment because of cost concerns, Senator Bond persisted, producing an eleventh hour solution in the Omnibus Appropriations Act for Fiscal Year 1999. Signed into law on October 21, 1998, this measure increased payments to home-health care providers, and it delayed until October 1, 2000, HCFA's proposed 15% reduction in reimbursements. The law will ensure continued access to home-health care for seniors and the disabled across the nation.

In November 1998, HCFA issued an additional notice clarifying that it would not make claims against any surety bonds prior to a new deadline for compliance. HCFA also advised the intermediaries holding bonds to return them to any home-health agency that requests this in writing. During the 106th Congress, the Committee will closely monitor HCFA's work on the surety bond, the revised IPS and the forthcoming PPS regulations.

#### *Committee Action*

On July 15, 1998, Chairman Bond convened a hearing of the Committee on Small Business to focus attention on HCFA rules. In response to information gathered at the hearing and HCFA's refusal to participate, Chairman Bond sent a letter to the Department of Health and Human Services on July 24, 1998. The Chairman's letter called on Secretary Donna Shalala to work with Congress to enact an immediate moratorium on the IPS and to withdraw the suspended surety bond regulations.

## **X. REFORM OF CONSUMER BANKRUPTCY LAWS**

### *Legislation*

Chairman Christopher S. "Kit" Bond supported the Consumer Bankruptcy Reform Act of 1998 (S. 1301), which passed the Senate on September 23, 1998. If enacted, the bill would have increased the amount collected by small business creditors from debtors in bankruptcy. The bill established a "means test" for Chapter 7 bankruptcies, by permitting a court to dismiss a Chapter 7 case or convert it to Chapter 13 if the court finds "abuse" of the bankruptcy system. Under current law, Chapter 13 requires consumers to establish a repayment plan (that generally lasts between three and five years) for their debts, while Chapter 7 allows consumers to liquidate their assets and eliminate most unsecured debts. To determine "abuse," the bill required a court to review whether (1) the debtor could pay at least 30% of nonpriority, unsecured claims from disposable income and (2) the debtor filed the petition in bad faith. The bill, however, prohibited motions to be brought to con-

vert or dismiss Chapter 7 cases if a debtor's family has monthly income of no more than "the national median family monthly income" for a family of equal size. The bill also would have eliminated certain abusive creditor practices.

The House of Representatives passed its version of consumer bankruptcy reform legislation on June 10, 1998. The conference report reconciling the Senate and House versions of this legislation was not approved by the Senate prior to adjournment of the 105th Congress.

## **XI. TELECOMMUNICATIONS**

### **A. FCC ACCESS CHARGE RULE**

#### *Background*

In its May 16, 1997, Report and Order, the Federal Communications Commission (FCC) modified the methods by which local-exchange carriers charge long-distance carriers for access to their network. The Report and Order also substantially increased the costs faced by long-distance carriers who utilize the local-exchange carriers tandem switches. The Committee was concerned about the FCC's failure to analyze the impact of changes to the pricing of interstate access service both on small long-distance carriers and on certain small retail businesses that use long-distance services.

#### *Committee Action*

On November 20, 1997, Chairman Christopher S. "Kit" Bond and Senator John Kerry, the Committee's Ranking Member, sent a joint letter on Regulatory Flexibility compliance to the FCC. The Committee's letter noted the opportunity provided the FCC by the Petitions for Reconsideration and encouraged the FCC to reassess the impact of its recent decisions on both small business long-distance carriers and the small business retailers that such carriers serve. Because the Report and Order were scheduled to go into effect on January 1, 1998, Chairman Bond and Ranking Member Kerry urged prompt consideration of these issues and the Petition for Reconsideration pending at the FCC.

### **B. FCC TELEPHONE DIRECTORIES RULE**

#### *Background*

In June 1998, the producers of independent telephone directories contacted the Committee regarding the potential impact of a pending FCC rulemaking to implement provisions of the Telecommunications Act of 1996. Congress intended Section 222(e) of the Act to increase competition and enhance the ability of independent publishers to compete with directories wholly owned by telephone companies. Although the market is dominated by directory subsidiaries of telephone companies, independent directory producers have successfully developed competitive products. More than 80% of independent directory producers are small businesses. Small businesses involved in directory publishing were concerned that the FCC rule to determine the "reasonable" price for subscriber list information might not recognize the minimal cost imposed on telephone compa-

nies when providing such information to requesting independent directory producers.

*Committee action*

On July 17, 1998, Chairman Bond and Ranking Member Kerry wrote the FCC Chairman William Kennard urging the FCC to conduct a thorough Regulatory Flexibility analysis prior to issuing a final rule and to ensure the rule achieved the competition Congress intended by protecting small businesses from market abuses. On September 3, 1998, Chairman Kennard responded, acknowledging the statutory preference for competition. He assured Chairman Bond that these concerns would be part of the record contemplated by the FCC staff and the Commission in this rulemaking. Currently, the FCC is working on its final report and order, with the SBA's Office of Advocacy assisting with the Regulatory Flexibility analysis.

## **XII. HEARINGS OF THE COMMITTEE**

### **"WOMEN-OWNED AND HOME-BASED BUSINESSES"— WASHINGTON, D.C., FEBRUARY 6, 1997**

On February 6, 1997, the Committee held a hearing on issues affecting women-owned and home-based businesses. Chairman Christopher S. "Kit" Bond convened the hearing to examine the obstacles facing women business owners and home-based businesses, as well as small businesses' access to capital, and effects of Federal procurement policy. In addition, the hearing focused on the burdens imposed by the tax laws, in particular, independent-contractor classification, the home-office deduction and health insurance for the self-employed.

All of the witnesses testified that there are many obstacles facing small business owners, many that have little or no effect on big business. The first witness, Carolyn A. Stradley, President and Chief Executive Officer, C & S Paving, Inc., provided a first-hand account of the hardships she overcame to become a small business owner. Susan Peterson, President, Founder, and Chief Executive Officer of Susan Peterson Productions, Inc., and Ms. Stradley noted that the fastest growing economic segment and vital component of our society and economy are women-owned businesses. Ms. Peterson and several other witnesses pointed out that there are eight million women-owned businesses, and over the years women-owned firms have had a better success rate than the average American firm. However, Phyllis Hill Slater, President of Hill Slater, Inc., pointed out that marginalization often occurs for women business owners. The witnesses noted, as a prime example, the Federal agencies failure to meet the 5% prime contracting goal for women suppliers in the Federal Acquisition Streamlining Act of 1994 (FASA). Bonny Filandrinos, President of Staffing Solutions, Inc., pointed out that small businesses can neither afford nor do they have the same resources that big businesses have to hire consultants and experts to help them ensure compliance with government regulations.

The witnesses also stressed that women-owned small businesses lack Federal procurement opportunities. Ms. Stradley and Ms.

Slater noted that only 2% of the \$176 billion awarded through Federal contracting has gone to women-owned firms, while women employ one in four workers in America. Ms. Slater also stated that the Federal government procurement market remains virtually closed to women suppliers. In addition M. Carole Wiedorfer, owner of M. Carole Wiedorfer CPA, testified that many women start their home-based businesses to obtain greater control over their compensation.

Access to capital also poses a problem to small businesses, and women-owned firms in particular, according to the panelists. Ms. Stradley pointed out that increased access to capital for women business owners is needed because they still have lower levels of capital than their male counterparts. Moreover, as Ms. Filandrinos pointed out, women do not have the same financial backing as men do. Andrea Silbert, Executive Director and Co-Founder, Center for Women and Enterprise, agreed and stressed the added need for education and training, both of which are provided by Women's Business Centers like her's in Boston, Massachusetts.

In the tax area, many witnesses agreed that independent-contractor status is a top issue affecting small businesses. Bill Trembly, President of Trembly Associates, Inc., testified that tax laws imposed by the government often affect hiring decisions, and as a result, businesses frequently take inefficient steps simply to fall within Internal Revenue Service (IRS) guidelines. Mr. Trembly, along with Ms. Wiedorfer, suggested that the 20-factor common law test for independent-contractor status is too difficult to figure out and too subjective. They concluded that independent-contractor qualifications are inefficient because they cause business owners to spend unnecessary amounts of time, money, and effort on compliance, which is never assured due to the ambiguous rules that favor the IRS. Mr. Trembly suggested, as an alternative to this and the overall complexity of the tax law, that a flat tax should be enacted.

Two final issues plaguing small businesses were also discussed at the hearing: the home-office deduction and the deductibility of health-insurance costs by the self-employed. As a result of the Supreme Court's 1993 *Soliman* decision, the home-office deduction has been dramatically narrowed and now requires a home-based business to see clients in the home, which is impossible for many entrepreneurs like plumbers, landscapers, and salespersons. Ms. Wiedorfer explained that the current state of the law places many home-based businesses at a competitive disadvantage with their large competitors, which can deduct all of their office expenses. She pointed out that the benefit of the deduction is reduced if the home-based business has no earned income for the year, since no tax deduction is allowed. Ms. Wiedorfer testified that under current law the Federal regulations and tests are too difficult to interpret, which makes the home-office deduction inefficient and impossible in many cases.

Health-insurance deductibility for the self-employed also poses a concern for many entrepreneurs. Big businesses are allowed to deduct the cost of their health-insurance coverage, while small businesses are not. Sal Risalvato, owner of Riverdale Texaco and Precision Alignment Center, testified that he did not realize he could not deduct his own health-insurance costs until he was audited and

found that he must count his insurance as income. Mr. Risalvato and Ms. Wiedorfer agreed that this is unfair because big business can deduct all of their health-insurance costs, creating a great inequality among small and large businesses.

“NOMINATION OF AIDA ALVAREZ TO BE ADMINISTRATOR OF THE UNITED STATES SMALL BUSINESS ADMINISTRATION”—WASHINGTON, D.C., FEBRUARY 12, 1997

On February 12, 1997, the Committee held a hearing on the confirmation of Aida Alvarez, whom President Clinton nominated to be the Administrator of the Small Business Administration (SBA). In his opening statement, Chairman Bond reviewed Ms. Alvarez’ qualifications to serve as SBA Administrator. In particular he noted that she had served as the Director of the Office of Federal Housing Enterprise Oversight (OFHEO) from 1993 to 1997. While noting a few of the relevant differences between OFHEO and the SBA, including staff size, budget, and range of influence; Chairman Bond indicated that he and Ms. Alvarez had discussed how her work at OFHEO, which oversees Fannie Mae and Freddie Mac, the largest government-sponsored enterprises, will help her administer the SBA. He stressed that while the SBA has served the small business community well, no organization can sustain success without complete assessment of its operations.

During the hearing Senators Spencer Abraham and Alfonse D’Amato testified in strong support for Ms. Alvarez. They both praised her work as the first director of OFHEO and commended her for being the first person of Puerto Rican heritage and the first Hispanic woman to hold a Cabinet-level position. Senator Abraham added that he believed she will be a strong advocate for small business. Senator D’Amato also voiced the support of Senator Daniel Patrick Moynihan for Ms. Alvarez’ confirmation.

In her testimony, Ms. Alvarez provided the Committee with a brief description of her personal history. She explained that her family moved to New York from Puerto Rico and her mother subsequently started a restaurant in a blue-collar neighborhood where, Ms. Alvarez testified, she learned both the satisfaction and frustration of owning a small business. Ms. Alvarez also described her qualifications and how her time at OFHEO and her professional career had thoroughly prepared her to lead the SBA. She explained that rather than listing statistics, she preferred to describe to the Committee what she had been hearing from the small business community. She testified that the small business community wanted an SBA Administrator who will convey their concerns to the President, and she stressed that, if confirmed, she would be that voice.

Ms. Alvarez concluded by briefly stating her three-part vision for the SBA. First, she wants the agency to be on the leading edge of financial management, which is critically important to the financial community, taxpayers and entrepreneurs, and the protection of the public trust. Second, she reiterated that she will be an effective voice in the Administration as a strong advocate for small business. Finally, she added that, if confirmed, she would look to create additional ways to maximize leveraging opportunities, such as through partnering with both the government and the private sector. She

concluded her testimony by expressing her commitment to working closely with the Congress as the SBA executes its mission of serving the needs of small business.

Following the hearing, the Committee unanimously recommended to the Senate that Ms. Alvarez be confirmed as SBA Administrator.

“THE PRESIDENT’S FISCAL YEAR 1998 BUDGET REQUEST FOR THE UNITED STATES SMALL BUSINESS ADMINISTRATION”—WASHINGTON, D.C., FEBRUARY 26, 1997

On February 26, 1997, the Committee held a hearing to review the Fiscal Year 1998 budget request for the Small Business Administration. The hearing provided a forum for discussion of the budget requests between the Committee Members and SBA Administrator Aida Alvarez. Citing the importance of the Committee’s role in passing legislation to empower the small business community, Chairman Bond requested that Ms. Alvarez provide an outline of the Fiscal Year 1998 budget request and its impact on small businesses. Additionally, he stressed the importance of providing funding to those programs that achieve their goals and eliminating those that fail to do so in order to free up capital for the growing small business community.

During the hearing, Ms. Alvarez testified that the Administration is committed to providing assistance to small businesses. The SBA’s Fiscal Year 1998 budget request was \$701.6 million, compared to its Fiscal Year 1997 appropriation of \$852.4 million. Ms. Alvarez noted that the figure would allow the SBA to continue operation of existing programs. She continued by highlighting the SBA’s goals for the agency reflected in the Fiscal Year 1998 budget. Financial objectives of the SBA’s request include: \$18 million to improve the agency’s financial management systems and oversight of its loan portfolio and participating lenders; \$1 million to conduct more sophisticated analysis of loan performance; \$1.9 million to buy technology and systems, as well as staffing, to reform and modernize the 8(a) program; \$8.5 billion program level for 7(a) loans; \$2.3 billion program level for 504 debentures; \$832 million for SBIC debentures and participating securities; and \$44 million for microloans.

In addition to her financial breakdown of the SBA budget request, Ms. Alvarez pointed out issues that the SBA plans to address in the upcoming Fiscal Year, including shifting many of its traditional loan-related activities to the private sector, continued centralizing of its loan servicing and processing functions, and meeting deadlines included in “last year’s omnibus appropriations bill to ensure a timely transformation of its credit programs.” She also set out as goals for the agency assistance to families on welfare in finding work through the SBA Microloan program and through cooperation with other Federal agencies. She also stated her objective of continued education assistance to nearly one million small businesses by restoring the 7(j) business development assistance to previous levels. In addition, Ms. Alvarez committed the agency to expanded business assistance programs by adding 10 to 12 new Women’s Business Centers, increasing the number of Business Information Centers by 10 to 12, and continuing support for



the Service Corps of Retired Executives (SCORE) and the Small Business Development Center (SBDC) program. Ms. Alvarez concluded by promising to follow the newly created Regulatory Fairness Board and the efforts of the Small Business and Agricultural Ombudsman to reduce the paperwork and regulatory burdens on small business.

“S. 208, THE HUBZONE ACT OF 1997”—WASHINGTON, D.C.,  
FEBRUARY 27, 1997

On February 27, 1997, the Committee held a hearing on the HUBZone Act of 1997 (S. 208). The hearing, the third in a series of hearings intended to evaluate the “nation’s failure to create new job opportunities and economic growth in distressed inner cities and rural communities,” provided testimony from four witnesses who discussed how the Act would improve these rural and inner city conditions. Chairman Bond stated that S. 208 would infuse cash into economically distressed areas to create jobs and move people from welfare to work. He further explained that to categorize an area as a HUBZone, it must have an excessively high poverty and unemployment rate. Chairman Bond encouraged the witnesses to provide an insight into how the Act would affect their geographic areas.

The first two witnesses, Barry Corona, President and Chief Executive Officer, Production Products Manufacturing & Sales, Inc., and Glynn Loope, Executive Director of the Allegheny Highlands Economic Development Authority, provided first-hand accounts of how they made improvements in their distressed neighborhoods by creating jobs and attracting investments. Mr. Corona grew up in an inner city where he later opened his own business and hired most of his employees from the area. As the owner of a minority company doing business with the Federal government, he testified that S. 208 is a piece of legislation that can make a difference in many communities by providing jobs, which he believes provides an answer to many of America’s social problems.

Mr. Loope based his support for S. 208 on his experience with the Appalachian area of Virginia. He testified that the Act could bring the Federal government outside of the Capital Beltway for procurement opportunities. Mr. Loope stated that S. 208 could provide Federal funds to raise the median family income to the norm of a state by providing work opportunities. He also pointed out that technology and telecommunications can advance the purposes of the HUBZone Act by allowing investors all over the world to have contact with small businesses with which they may never have had contact. Both witnesses agreed that S. 208 could help bring individuals from welfare to work and improve the areas implementing the Act.

The second panel of witnesses raised some concerns about the Act, although they too favored many of its goals. Ursula Powidzki, Managing Director, Baltimore Advisors, Inc., offered some insight into the dangers of a guaranteed market through the HUBZone Act. She was concerned that the Act does not cover heavily represented industries in urban areas and questioned what effects the Act would have on businesses moving into HUBZones. Ms. Powidzki also testified about the effects of changes in Federal de-

fense expenditures and how the discontinuation of programs could affect HUBZones.

The final witness, Fabio Sampoli, Senior Vice President, The Greater New Haven Chamber of Commerce, also expressed apprehension concerning S. 208, while pointing out its positive aspects. Mr. Sampoli voiced opposition to legislation that interferes with the working of the free-market economy. Nevertheless, he testified that unrestrained and unchecked development leads to suburban growth, which can be detrimental to economic development in inner cities. Mr. Sampoli stated that he has seen this in his State of Connecticut and emphasized that inner cities need economic revitalization by providing new jobs. He also agreed with the Act's requirement that, for a small business to qualify, it must draw 35% of its employee base from a HUBZone.

The hearing provided important information concerning the feasibility of enacting S. 208. While some witnesses expressed skepticism about certain aspects of the program, a consensus existed with regard to the viability of the HUBZone legislation, specifically in providing for economic revitalization to impoverished inner cities and rural communities.

“ENTREPRENEURSHIP IN AMERICA: CULTIVATING MAINE GROWN  
BUSINESSES”—BANGOR, MAINE, MARCH 25, 1997

On March 25, 1997, the Committee held a hearing in its series on “Entrepreneurship in America.” The hearing focused on cultivating small businesses in Maine and was held at Ranglely Hall of the Eastern Maine Technical College in Bangor, Maine. In their opening statements, Chairman Bond and Senator Olympia Snowe stressed that there are three important forces for economic growth in Maine and nationwide: home-based enterprises, women-owned businesses, and family-owned firms.

The first panel of witnesses focused on access to capital for women-owned businesses, especially in Maine. Patricia LeBlanc, Owner, Founder, and President, LeBlanc's Food Enterprises, Inc.; Julia Comeau, President, Downeast Temps Staffing Services; and Lewis H. Payne, Executive Vice President and Senior Lending Officer, Bar Harbor Banking and Trust Company, testified that women business owners generally have a more difficult time obtaining bank loans than men, although the situation is continuing to improve. Mr. Payne stated that this issue is particularly important in Maine because women-owned businesses are an essential part of the economy in the northern and eastern parts of the state. The witnesses also noted that while access to capital is important, small businesses need assistance with developing good business plans and require support in making the plans work in order to ensure ongoing success and growth.

The second panel testified about the needs and concerns of family-owned businesses. Jinger Duryea, President, C.N. Brown; Charles P. Garland, President, Garland MFG Company; and Kevin D. Hancock, Executive Vice President, Hancock Lumber Company, Inc., focused primarily on the destructive impact of Federal estate taxes. They stressed that estate taxes are punitive in nature and discourage businesses from being passed on from one generation to the next. Mr. Hancock emphasized that there should be an imme-

diate and significant reform to the existing law, and he noted that the estate tax law is a perfect example of Federal laws conflicting with Federal priorities—promoting the continued growth and development of small businesses.

The third panel examined the issues facing home-based business owners. Alice Bredin, President, Bredin Business Information; James C. Harriger, Independent Sales Representative; and Daniel T. Crowley, Vice President, Screen Scene Inc., testified that one of the top concerns of home-based business owners is that health-insurance costs are not fully deductible for self-employed individuals. They urged the Committee to work for full deductibility and offered their strong support for the Home-Based Business Fairness Act, which was introduced by the Chairman and Senator Snowe. The witnesses testified that the provisions of the bill—restoration of the home-office deduction, full deductibility of health-insurance costs for the self-employed, and clarification of the status of independent contractors—would enable current owners of home-based businesses to reach their potential and help others start up and expand new home-based businesses.

**“ENTREPRENEURSHIP IN AMERICA: IMPACTS OF MEAT INSPECTION ON SMALL BUSINESS”—GREAT FALLS, MONTANA, APRIL 2, 1997**

On April 2, 1997, the Committee held a field hearing, part of its continuing series on “Entrepreneurship in America,” dealing with the impact of meat inspection on small business. As described by Senator Conrad Burns, who chaired the hearing, its purpose was to focus attention on labeling and inspection of imported meat and cost sharing of inspection fees. Senator Burns prefaced the hearing by noting that prior effort to resolve these issues had not adequately addressed the concerns of small businesses. He expressed the hope that the hearing would make progress toward that goal and underscore the need for legislative changes, which he expected to offer subsequently.

All of the witnesses testified about the importance of meat inspection and proper labeling. The first panel of witnesses consisted of Lynn Cornwell, President of Montana Stockgrowers Association, George Paul, Legislative Director of the Montana Farmers Union, and Robert Hanson, Vice President of Montana Farm Bureau Federation, who testified that imported meat was not properly labeled as to the country of origin. They also emphasized the need for improved inspection of meat in the United States by increasing the percentage of meat inspected in each batch. Mr. Hanson also raised concerns about the use of United States Department of Agriculture (USDA) stamps on imported meat. He pointed out that the inspection quality of other countries might not be the same as that in the United States. He proposed changing the inspection stamp to read “Import Approved but not U.S. Inspected.” Paul Thompson, Director of the Western Region Food Safety and Inspection Service, USDA, agreed with other witnesses that imported meat should have a higher standard of inspection than the current level. Mr. Cornwell addressed the issues of cost-sharing programs and interstate shipping and suggested that consumers share the cost of improvements to food safety measures so the fees are not borne by beef cattle producers alone. He also asserted that interstate ship-

ment of meat and poultry products should no longer be banned because this prohibition gives unfair economic advantage to large meat processors and foreign competitors.

Bonnie Crary, representing the Montana Cattlemen's Association, also stressed the importance of proper labeling and inspection of meat. She pointed out that contamination can occur on any level. As a result, she recommended that each batch of meat that leaves the plant be inspected so that if it gets contaminated later, the contamination can be traced back to the point of origin. Rick Cook, Vice President of Vaughn Meat Packing Inc., testified about the financial aspect of meat inspection. The final witness, Robert Robinson, Director of Food and Agriculture Issues, Resources, Community, and Economic Development Division, U.S. General Accounting Office, explained the inspection process and defended current methods of inspection by arguing that they adequately protect public safety.

"ENTREPRENEURSHIP IN AMERICA: SOLUTIONS FOR TAX AND REGULATORY FAIRNESS FOR SMALL BUSINESS"—CASPER, WYOMING, APRIL 3, 1997

On April 3, 1997, the Committee held a field hearing in its continuing series on "Entrepreneurship in America." The goal of the hearing was to bring together small business owners and government officials to provide input on how government can best serve America's small businesses. Chaired by Senator Mike Enzi, the hearing included an examination of regulations facing small businesses, as well as ways to reduce paperwork and administrative burdens. In addition, the hearing focused on balancing environmental regulations with the needs of businesses and introducing ways to make such laws more flexible.

Senator Enzi prefaced the hearing in his opening statement by noting that small businesses create almost "100% of this country's new jobs, and they employ more than 65% of Americans working in the private sector." Small businesses today find themselves buried under mounds of mandates and regulations, which are often too broad and inflexible for people to understand. The Committee heard testimony from small business owners, two Wyoming state representatives, as well as the Wyoming Department of Environmental Quality.

All of the witnesses testified that there are substantial regulatory obstacles facing small business owners, which make it harder for them to survive. In particular, several witnesses focused on the burdens imposed by the tax laws and regulations. Eli D. Bebout, Majority Leader, Wyoming House of Representatives, and President, Nucor Oil & Gas, Inc., along with several other witnesses, noted that more tax incentives would help small businesses compete with larger companies. John J. Hines, Member, Wyoming House of Representatives, emphasized that changing the estate tax law is critical to helping small businesses stay in business. Diane Wolverton, State Director, Wyoming Small Business Development Center, noted that home-based businesses face many tax obstacles because the IRS views them with skepticism, and she pointed out that many home-based business owners believe that if they claim the home-office deduction, they will most likely be audited. Several

witnesses expressed concern about the self-employment tax, and David R. Reetz, President, Powell Valley Economic Development Alliance, First National Bank of Powell, alerted the Committee to the problems that small businesses face when they use independent contractors, which are often necessary for specific jobs.

The Committee also received considerable testimony about the effects of environmental regulations on small businesses. A number of the witnesses testified about the importance of striking a balance between cost-effective regulations and protecting the environment. Representative Bebout and Terry Oldfield, Vice President, MiniMart Corporation, Casper, Wyoming, recommended placing more emphasis on the socioeconomic effects of regulations, and gathering more scientific information before placing new restrictions on businesses. Bob O'Neil, Director of Human Resources, Grand Teton Lodge Company, noted the difficulties small companies face just to keep up with all of the regulations, as well as differentiating between the rules administered by Federal and state agencies. Dennis Hemmer, Director, Wyoming Department of Environmental Quality, testified about the importance of emphasizing compliance and compliance assistance for small businesses. He noted that many small businesses make errors due to ignorance of the law and that regulators should focus on ways to help businesses avoid liability while protecting the environment.

Witnesses also expressed concern about the Occupational Safety and Health Administration (OSHA). Frank S. Galeotos, Director, Wyoming Department of Employment, discussed the main problem of enforcing OSHA regulations. He noted that many small businesses do not know all of the rules, nor do they have the capacity, in terms of people, skills, and finances to comply with all of the regulations, which makes full compliance very difficult. He also testified that not all of the rules apply or make sense when they are applied on a uniform basis. He suggested creating incentives, such as a voluntary program under which a business that volunteers to make a safety plan will not be subject to fines on inspection. Mr. Galeotos and other witnesses also suggested implementing incentives for Workers' Compensation programs as opposed to fines.

Two final issues raised at the hearing were the non-deductibility of self-employed health-insurance costs and the Family and Medical Leave Act. Witnesses noted that large companies are currently allowed to deduct employees' health-insurance costs in full, while owners of small businesses can only deduct a portion of their cost. In essence, they are penalized because they are small businesses instead of encouraged to provide health care coverage. On the issue of family and medical leave, both Mr. O'Neil and Mr. Oldfield expressed opposition to broadening the Family and Medical Leave Act and instead suggested compensatory time and more flexible scheduling.

“S. 208, THE HUBZONE ACT OF 1997”—WASHINGTON, D.C.,  
APRIL 10, 1997

On April 10, 1997, the Committee held a hearing on the HUBZone Act of 1997 (S. 208), a bill to help create jobs for those most in need and stimulate investment in communities that need revitalization. The purpose of the hearing included examination of

the HUBZone Act, the challenges of implementing the Act, and the effects it may have on small businesses currently participating in the 8(a) program administered by the SBA.

Chairman Bond prefaced the hearing in his opening statement by commending the SBA's recent inclusion of the first Community Development Corporation-affiliated company into the 8(a) program. He noted, however, that it is an important tool the SBA should use along with other tools, such as HUBZones, to help create new jobs. The Committee heard testimony from several witnesses concerning these issues.

All of the witnesses testified that there is a great need to help the nation's economically challenged urban and rural communities, especially those in which the labor pool is greatly underutilized. However, the witnesses' opinions differed when discussing the best way to help those communities—either through HUBZones or the current 8(a) program. Aida Alvarez, SBA Administrator, testified that the Clinton Administration believes that much work can be done under the current law to obtain the objectives that the HUBZone Act seeks to accomplish. While she acknowledged that there is room for improvement in the current 8(a) program, she noted that the Administration's empowerment-contracting approach preserves administrative flexibility, builds on existing initiatives in empowerment zones and enterprise communities, and allows testing of new approaches through a phased approach. Ms. Alvarez, along with several other witnesses, raised concerns about the difficulties of implementing and enforcing the provisions of the HUBZone Act.

Another concern expressed by several witnesses was the effect that HUBZones might have on minority- and women-owned businesses. Anthony W. Robinson, President, Minority Business Enterprise Legal Defense Fund, was troubled that the legislation makes HUBZone small businesses a higher priority than small businesses owned by socially and economically disadvantaged individuals. Mr. Robinson also had reservations that the bill may redirect Federal procurement in ways that threaten minority- and women-owned businesses across the board.

The Committee also received considerable testimony from witnesses who viewed the current 8(a) program as not going far enough to help troubled urban and rural communities and testified that the HUBZone approach will better aid these areas. James F. Hoobler, SBA Inspector General, suggested a pilot HUBZone program for a multi-year period in a carefully selected, limited number of rural and urban underutilized business zones. He emphasized that Congress should appropriate the necessary funds to the SBA for management and oversight of the program. Sandra Newman, Chief Executive Officer, Raritan Container Company, testified that the HUBZone Act could benefit whole communities by creating meaningful incentives for small businesses to operate and provide employment directly in America's most distressed areas. Ms. Newman also noted that the bill will create a new class of small businesses eligible for Federal government contract set-asides and preferences. Pete Homer, President and Chief Executive Officer, National Indian Business Association, provided testimony about the difficult economic conditions in Native American communities. Mr.

Homer noted that the HUBZone Act may help break the cycle of poverty by providing contract set-asides, sole-source contracting opportunities, and an economic incentive for companies to invest in the Indian business community.

“OVERSIGHT OF SBA’S NON-CREDIT PROGRAMS”—  
WASHINGTON, D.C., APRIL 24, 1997

On April 24, 1997, the Committee held a hearing on the non-credit programs of the SBA. Chairman Bond opened the hearing by emphasizing the importance of SBA’s entrepreneurial assistance, which the agency carries out primarily through the SBDCs, SCORE, the Women’s Business Centers, and international trade programs. He noted that the witnesses were asked to testify about their experience with these programs and to share with the Committee any recommendations for improvement.

To provide a perspective on the SBA’s entrepreneurial assistance programs, the Chairman began the hearing with two panels consisting primarily of students who testified about the importance of starting business education at an early age. Jean M. Buckley, Senior Vice President, Junior Achievement, testified that Junior Achievement is a non-profit organization whose mission is “to educate and inspire young people to value free enterprise, business, and economics in order to improve the quality of their lives.” The organization reaches more than 2.7 million students worldwide. The student witnesses on the first panel testified about their participation in Junior Achievement. Through personal anecdotes, the students testified that the program is extremely beneficial for learning business skills and values, and they urged that it be introduced in every high school in the United States.

The second panel included students who had also participated in business education programs, including Future Farmers of America (FFA), and who had succeeded in their own business ventures. The students described their experiences in the business world and testified that access to business education programs gave them the motivation and guidance necessary to make their business operations a success. Marilyn Kourilsky, Ph.D., Vice President, Center for Entrepreneurial Leadership, Inc., Ewing Marion Kauffman Foundation, testified about the goals and operation of the student programs that the Center for Entrepreneurial Leadership conducts, and she noted that these programs provide not only practical benefits but also give students the self-esteem, confidence, and the courage to start a successful enterprise in the business world.

Jeanne Sclater, Acting Associate Deputy Administrator for Economic Development, SBA, reviewed for the Committee the SBA’s various business assistance programs. She noted that the SBA’s education services are important to the individual small businesses and to the country’s economy as well, because they serve as a resource for small business owners to develop the tools they need to succeed. Ms. Sclater also reviewed the Administration’s Fiscal Year 1999 budget request for these programs and proposed legislative changes to certain of the SBA’s non-credit programs.

The Committee also received detailed testimony on the SBA’s SCORE and SBDC programs. Frederic W. Thomas, President of SCORE, noted that as an SBA Resource Partner, SCORE gives en-

trepreneurs access to seasoned business professionals who can offer guidance on how to start, operate, grow, buy, and sell small businesses. He also reviewed various proposals for improving and expanding the program, which were included in the Administration's budget request. Sam Males, State Director, Nevada Small Business Development Center, and President, Association of Small Business Development Centers, testified that the SBDCs constitute the largest integrated management technical assistance program for small businesses in the United States. He noted that the amount of assistance provided by the SBDCs has picked up extraordinarily over the past six years, and he described the various types of assistance that are available to small business owners through the SBDCs in each state. Mr. Males also expressed his concerns that the Administration's budget request called for a significant cut in funding for the SBDCs.

The final two witnesses testified about the impact of SBA non-credit programs on sectors of the small business community. S. Terry Neese, Corporate and Public Affairs Liaison, National Association of Women Business Owners, provided a historical perspective on the Office of Women Business Ownership and the National Women's Business Council. She also stressed the importance of business education and training to the success of women business ownership in this country. Ms. Neese noted, however, that the current Administration's commitment to these efforts has been lacking. She provided the Committee with several recommendations for strengthening these efforts. Ms. Neese and Susan Eckerly, Director, Federal Governmental Relations—Senate, National Federation of Independent Business (NFIB), both expressed their support for the SBA's Office of Advocacy. Ms. Eckerly, however, noted that NFIB's surveys indicate that a top concern of small business is the burden of government regulations. She urged the Office of Advocacy to increase its efforts to address the regulatory burdens and compliance costs as the advocate for small businesses within the Administration.

The hearing provided the Committee with valuable information on the SBA's non-credit programs and served as the basis for important parts of the legislation to reauthorize the agency, which the Committee took up later in the session.

“OVERSIGHT OF SBA'S FINANCE PROGRAMS”—WASHINGTON, D.C.,  
MAY 7, 1997

On May 7, 1997, the Committee held an oversight hearing on the finance programs of the SBA. The hearing was the first of two hearings to review the operating results of the SBA's finance programs focusing specifically on the 504 loan program and the Small Business Investment Company (SBIC) program. In his opening statement, Chairman Bond emphasized that the testimony provided by the witnesses would be extremely important as the Committee prepared to reauthorize these programs later in the year. The Chairman also focused considerable attention on the other SBA lending program, the 7(a) loan program, and the Administration's failure to provide full and complete information to date on that program, which the Committee addressed in the following hearing.



The first panel of witnesses focused on the 504 loan program, which provides financing for small businesses to purchase and improve facilities. Both witnesses emphasized that the 504 program must be reauthorized if it is to survive. Since the program relies only on fees charged in relation to 504 loans, Congress must renew the authority to collect the fees if the program is to continue with a zero subsidy. Mark Barbash, Vice President of Congressional Relations, National Association of Development Companies, and Executive Director, Columbus Countrywide Development Corporation, also urged the Committee to focus on the subsidy rate calculations provided by the Office of Management and Budget (OMB). He and Steve Dusek, Chief Executive Officer, Prairieland Economic Development Corporation, emphasized that OMB must be held accountable for accurate subsidy rate estimates in order for the 504 program to remain stable and continue to provide its valuable financing assistance for small enterprises. Messrs. Barbash and Dusek provided the Committee with several legislative proposals to strengthen the program, including recommendations on the Premier Certified Lenders program and on multiple borrowers and the partial lease-out of projects.

The witnesses on the second panel testified about the SBIC program, which provides critical capital for small businesses through investment. All three witnesses urged the Committee to reauthorize the SBIC program for an additional three-year period with modifications to the authorization levels for debentures and participating securities issued under the program. C. Walter Dick, Chairman, National Association of Small Business Investment Companies, and General Partner, Pioneer Capital Corporation, Pioneer Ventures, L.P. 1, and Pioneer Ventures, L.P. 2, provided the Committee with anecdotal evidence of the SBIC program's success, and he offered several suggestions for legislative enhancements that would improve the program.

N. Whitney Johns, Chief Executive Officer, Whitney Johns & Company, focused on women-owned businesses in particular, noting that approximately 8 million women-owned businesses in the country employ one out of every four workers in the economy and account for \$2.3 trillion in sales. She stressed that while women-owned businesses constitute such a significant portion of the market, they still face considerable difficulties when it comes to accessing capital. She recommended program changes that would enable more women-owned businesses to benefit from the capital available under the SBIC program. Stanley W. Tucker, Member of the Board, National Association of Investment Companies, and President, Maryland Small Business Development Financing Authority Management Group, Inc., also called the Committee's attention to the continuing capital gap faced by minority-owned businesses and asserted that the SBIC program is an appropriate place to address that issue.

“OVERSIGHT OF THE SBA’S FINANCE PROGRAMS—PART II”—  
WASHINGTON, D.C., MAY 15, 1997

On May 15, 1997, the Committee held the second part of its hearing on the finance programs administered by the SBA. Following on the testimony received on the 504 loan program and the

SBIC program, Chairman Bond focused this hearing on the SBA's 7(a) Guaranteed Business Loan program. In his opening statement, Chairman Bond stressed the importance of the 7(a) loan program for the thousands of small businesses that rely on it for financing and new business startups.

The Chairman noted, however, his concerns about recent revelations by the SBA that there would be a funding shortfall in the 7(a) program, and he expressed his reservations about the loan cap that the SBA imposed on the program to address that situation. He urged the SBA Administrator and the Clinton Administration to provide full and complete information to the Committee on the situation concerning the 7(a) program, and he was optimistic that a bipartisan solution could be achieved to keep this important loan program operating efficiently and effectively.

The Committee first heard testimony from Aida Alvarez, SBA Administrator, who focused much of her testimony on the \$500,000 cap on loans under the 7(a) program. She testified that the loan cap was necessary to assure that the SBA does not run out of lending authority under the 7(a) program before the year's end. She explained that the cap was set at \$500,000 because available data showed that 90% of the loan applications would still qualify at that level. She also indicated that while only about 10% of the loan applications exceeded the cap, these larger loans would consume 40% of the SBA's available loan authority. Ms. Alvarez testified that these larger loans are less likely to go to rural areas, women-owned firms, and new startup businesses—borrowers who have historically faced barriers to accessing credit. Instead, the large loans tend to be those that have longer terms and that are secured by real estate.

Ms. Alvarez also testified about the Fiscal Year 1999 budget request for the 7(a) program. She noted that the Administration requested authorization of \$10 billion for the program, an increase of \$1.5 billion over the Fiscal Year 1998 appropriations request. She also committed the agency to identifying improvements to the program to lower its costs and increase lending to small businesses. Toward those ends, Ms. Alvarez announced that she would be forming a task force to review the program and present the Committee with recommendations for changes that would preserve and protect the loan program.

The second panel consisted of two witnesses representing the lenders that implement the SBA's 7(a) program. Both witnesses agreed that the 7(a) program is one of the most beneficial programs currently available for small businesses to grow and create jobs in this country. They also emphasized their opposition to the loan cap recently imposed by the SBA. Deryl K. Schuster, President, Mid-America Division, Business Loan Center, and Chairman, National Association of Government Guaranteed Lenders, Inc. (NAGGL), pointed out that in addition to the assistance that the program provides for small businesses, numerous studies have verified that the 7(a) program is in fact a net generator of revenue for the Federal government. He concluded that restrictions, such as the loan cap, are counterproductive on many fronts.

Anthony R. Wilkinson, President and Chief Executive Officer, NAGGL, emphasized that the 7(a) program pays for itself many

times over, making it effectively cost free. He testified that in every year except for one since the Credit Reform Act was put in place, borrowers under the 7(a) program have paid fees well in excess of the program's cost. Because of that fact and in light of the current shortfall facing the 7(a) program, Mr. Schuster called for a complete revision of the procedure for calculating the subsidy rate for the loan program. Mr. Schuster concluded by assuring the Committee that NAGGL is committed to working with the SBA and Congress to identify ways to make the 7(a) program more efficient and cost effective.

“ENTREPRENEURSHIP IN AMERICA: THE IMPACT OF OSHA AND  
OTHER AGENCIES”—GREAT FALLS, MONTANA, MAY 31, 1997

On May 31, 1997, the Committee on Small Business held another hearing in its series on “Entrepreneurship in America.” The hearing was held in Great Falls, Montana, and was chaired by Senator Burns. It was intended to examine the impact of OSHA and other Federal government agencies on small businesses. Senator Burns stressed that the Federal government needs to be sensitive to the policies that can hurt small businesses, and he indicated that OSHA can be a real asset for businesses in terms of helping businesses provide safe workplaces. He emphasized, however, that OSHA could work more cooperatively with small businesses to encourage compliance.

Several witnesses testified about the inefficiency of OSHA and its negative effect on small businesses. John McFarland, Owner, Conrad Building Center, conveyed his personal experience with the evolution of increased government regulations in the area and the resulting pressures they place on businesses. He pointed out that highly paid executives must often be hired to comprehend and administer these regulations, while the blue collar workers have to be laid off to offset the additional cost. Sidney Rispens, General Manager and Corporate Secretary, Intercontinental Truck Body, agreed with Mr. McFarland, stating that OSHA's effects on small business are deeply felt, primarily in terms of cost. Mr. Rispens emphasized that the cost to maintain and follow regulation is astronomical.

Mr. Rispens warned about differences between state and Federal health and safety regulations, noting that at times state and Federal inspectors contradict each other on the items considered to be substandard. Tom K. Hopgood, Executive Secretary and Counsel, Montana Beer & Wine Wholesalers Association, acknowledged that regulations by state and Federal agencies are often extensive and do not correspond to individual businesses' needs. Mr. Hopgood also testified that OSHA's efforts to implement strict workplace ergonomic standards are not based on sound scientific evidence and in turn will have a disastrous effect on businesses.

David Folsom, Safety and Health Supervisor, Safety Bureau, Employment Relations Division, Montana Department of Labor and Industry, noted that the Safety Bureau offers workplace safety and health assistance to Montana businesses. In particular, the Bureau's Assistance to Business Clinics extend formal training sessions on OSHA's General Industry and Construction Standards. The purpose of these clinics is to provide a forum in which interested employers and employees can obtain information on work-

place safety and health issues. They also conduct training programs that help interested parties receive hands-on experience. Elaine Demery, President, Nelson, Coulson, & Associates, Inc., and Chair, Small Business Fairness Board, Region VIII, agreed that clearer interpretation of OSHA's regulations would ensure equal enforcement and fairness when it comes to small businesses. Ms. Demery testified about the Ombudsman program and Fairness Boards created by the Small Business Regulatory Enforcement Fairness Act (SBREFA), one goal of which is to help government and small businesses work together more efficiently. She emphasized that the Fairness Boards hold regional meetings that are open to the public to hear concerns and complaints about agency conduct and enforcement actions.

Bart Chadwick, Regional Administrator, Region VIII, OSHA, testified about the new OSHA and how it is different and more efficient than the agency has been in prior years. He noted that OSHA serves a vital purpose of preventing employers from taking advantage of their employees. He also pointed out that the agency ensures access to means, methods, and procedures that can help reduce injury and provide an acceptable workplace for every worker.

“SMALL BUSINESS PERSPECTIVES ON MANDATES, PAPERWORK, AND  
REGULATION”—WASHINGTON, D.C., JUNE 4, 1997

On June 4, 1997, the Committee held a hearing on small business perspectives on mandates, paperwork, and regulation. Chairman Bond convened the hearing during Small Business Week to explore the Federal government's efforts to reduce or eliminate unfunded mandates, excessive paperwork requirements, and Federal regulations that burden small businesses. Specifically, the hearing reviewed the implementation of the Paperwork Reduction Act of 1995 and discussed the Mandates Information Act of 1997, a bill designed to complete the work of the Unfunded Mandates Reform Act of 1995.

Chairman Bond opened the hearing by commending Senator Dirk Kempthorne and his Unfunded Mandates Reform Act, which provides Congress with the valuable information on legislation and agency rules that would impose unfunded mandates on state and local governments and the private sector. He noted, however, that more needs to be done to ensure that Congress has sufficient information on private sector mandates, especially regarding the costs imposed on consumers and small businesses.

Senator Spencer Abraham testified about the Mandates Information Act of 1997, legislation he introduced to force Congress to take into account the costs of unfunded mandates on the private sector. Senator Abraham noted that the bill is intended to identify and reduce unnecessary costs on American workers, consumers, and small businesses. The Mandates Information Act of 1997 would establish a new parliamentary point-of-order against any bill that will impose private-sector mandates exceeding a \$100 million cost threshold. Representative Gary Condit, the sponsor of the bill in the House of Representatives, testified that the bill would require the Congressional Budget Office (CBO) to estimate the impact of such unfunded mandates on consumer costs, worker wages, and the availability of goods and services.

All of the witnesses testified that while the Unfunded Mandates Act of 1995 was a beginning, more needs to be done to help control the costs of mandates imposed by Congress. Angela Antonelli, Deputy Director for Economic Policy Studies, The Heritage Foundation, provided testimony on implementation of the Unfunded Mandates Reform Act of 1995, and noted that while it has had limited success, it needs to be strengthened. Ms. Antonelli expressed her support of the Mandates Information Act of 1997. Bob Spence, Vice President and Chief Financial Officer, Faultless Laundry Company, representing the United States Chamber of Commerce, testified that the Chamber is in full support of the Mandates Information Act, and hopes that it will lead to full disclosure and better accountability by the Federal government.

David Marsh, Owner, Marsh Plating Corporation, testified about his involvement with the EPA's Common Sense Initiative and the agency's compliance with Chairman Bond's Red Tape Reduction Act [*i.e.*, Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)]. Mr. Marsh commented on the benefit of the Red Tape Reduction Act's requirement that EPA sit down with small businesses and receive their comments on draft regulations before the regulations are proposed by EPA. He stressed that this process improves the likelihood of the regulated community understanding the agency's objectives and the agency developing a rule that is better suited to compliance by small businesses. Mr. Marsh noted that EPA did not comply with the law when developing its National Ambient Air Quality Standards for ozone and particulate matter.

Michael Brostek, Associate Director, Federal Management and Workforce Issues, General Government Division, General Accounting Office (GAO), testified about the government's weak efforts under the Paperwork Reduction Act of 1995. The Act requires the Federal government to set goals to achieve at least a 10% paperwork burden reduction in 1996 and also in 1997, and then 5% reductions in each year through 2001. Chairman Bond noted that the OMB apparently decided to rewrite the law to suit the regulators better by ignoring the 1996 and 1997 levels and shooting for an aggregate 25% reduction by the end of Fiscal Year 1998. The GAO confirmed that the government-wide reductions will not even come close to the target set by Congress.

Philip Hauck, President, Counselor Publishing Company, testified that in order for agencies to achieve a reduction in paperwork, their leadership at every level must develop a plan that achieves the goal rationally, but makes sure the goal is attained. Mr. Hauck noted the importance of holding specific individuals responsible, not just the entire agency.

"OVERSIGHT OF SBA'S MICROLOAN PROGRAM"—WASHINGTON, D.C.,  
JUNE 12, 1997

On June 12, 1997, the Committee held an oversight hearing on the Microloan Demonstration Program administered by the SBA. Chairman Bond opened the hearing by noting that the Microloan program, established as a pilot program in 1992, provides critical capital for small businesses. The program focuses on borrowers seeking no more than \$25,000 who are not normally served by other SBA credit programs or traditional lending sources. Chair-

man Bond also discussed the ongoing controversy surrounding the SBA's imposition of a lending cap on loans under the 7(a) program, and he noted that efforts were underway to resolve questions about the shortfall in the program as well as questions about its subsidy rate.

The first panel consisted of witnesses who had a long history of experience dealing with the Microloan program. Several witnesses offered anecdotal evidence of the program's benefits for small businesses, and the panel urged the Committee to make the program permanent. Prathiba Mathews-Wheeler, Microloan Program Manager, Center for Business Innovation, Inc., and Katherine McKee, Associate Director, Center for Community Self-Help, explained that the program helps micro-businesses that are typically too high a risk for conventional lenders and that cannot obtain essential capital for growth and development from other sources. Ms. Mathews-Wheeler testified that a critical component of the Microloan program is the technical assistance that each borrower receives in the areas of management, marketing, human resources, finance, and accounting. She noted that this assistance helps borrowers be successful and is a contributing factor to her company's low loan-loss rate for Microloans. The witnesses also offered a number of suggestions for improving the program, including modification of the loan loss reserve rate, and greater flexibility in structuring loans and providing technical assistance under the program. Several witnesses also urged the Committee to target minority and disadvantaged entrepreneurs through the program and to evaluate the program as an option for helping low-income individuals to transition from welfare to work.

Angela Fair, Loan Officer, Arkansas Enterprise Group, led the second panel with several additional success stories of small businesses that received Microloans. One of the Arkansas Enterprise Group's borrowers, George White, Delta Vending Enterprises, also testified, and described how he would not have been able to start his vending machine business and employ three people without the loans he received under the program. John F. Else, Ph.D., President, Institute for Social and Economic Development, testified that his organization focuses primarily on welfare recipients and low-income individuals. Dr. Else noted that through Microloan funding, the Institute for Social and Economic Development has been able to help these individuals start their own businesses and develop enterprises that employ other low-income people and welfare recipients. The witnesses also offered a number of suggestions for improving the program and expanding its benefits to help more people start their own businesses.

**"ENTREPRENEURSHIP IN AMERICA: FAIRNESS IN REGULATORY  
ENFORCEMENT"—KANSAS CITY, MISSOURI, AUGUST 19, 1997**

On August 19, 1997, Chairman Bond and Representative James Talent, Chairman of the House Committee on Small Business, presided over a joint hearing of the Senate and House Committees in Kansas City, Missouri. The field hearing continued the "Entrepreneurship in America" series of hearings, which highlights the experiences of small business owners across the country. Chairman Bond focused this hearing on the Red Tape Reduction Act [also

known as the Small Business Regulatory Enforcement Fairness Act (SBREFA)], and in particular the provisions of the Act that address agency enforcement actions. The Committees' goals were to learn whether the messages heard from agencies in Washington, regarding compliance with the Act, were being carried back to their regional offices and reflected in the treatment received by small businesses that interact with the agencies.

The first panel consisted of small business owners, and witnesses described their recent and notable experiences with various Federal agencies. On behalf of the Kansas City Chamber of Commerce, Bob Spence, Vice President and Chief Financial Officer, Faultless Laundry Company, testified about his company's experience with the Immigration and Naturalization Service (INS). Because of his interaction with the INS in 1994, Mr. Spence was not inclined to contact the agency for compliance assistance and was hesitant to trust other agencies' offers of assistance. His reluctance to seek a cooperative relationship with Federal agencies stems from the INS raid of his company and the issuance of a penalty despite the company's cooperation and prior assurances by the INS that no penalty would be imposed if the company cooperated. Chairman Bond noted that earlier inspections by INS-trained auditors did not discover problems with the same paperwork that led to the raid in 1994. If the INS' own inspectors did not detect problems with the paperwork, Chairman Bond noted, it is hard to understand how the average employer is expected to grasp such subtleties.

Sherman Titens, President, Coordinating Committee for Automotive Repair (CCAR), and Executive Director, CCAR-GreenLink, testified about the positive experience his trade association and industry is having with the EPA. Based on an EPA grant, CCAR-GreenLink has established an Internet site to provide compliance assistance information to the auto repair industry. The reception from the industry has been tremendous. Mr. Titens noted that CCAR-GreenLink does not heavily advertise its support from an EPA grant because of concerns that such an association might discourage members of the industry from seeking assistance from the organization. Chairman Bond commended CCAR-GreenLink and stressed the importance of the availability of such information so that employers can know what is expected of them by a regulatory agency and be able to comply.

The first panel also included Ed Hatfield, Human Resources Manager, Cook Brothers Insulation, Inc., who testified on behalf of the Associated Industries of Missouri (AIM), a statewide trade organization that had formed a special task force in response to member companies' concerns about enforcement practices at OSHA. In 1996, OSHA announced a targeted inspection strategy for Missouri employers called Missouri 500. The program was flawed in its design, and statements of Joseph Dear, then-head of OSHA, implied that employers targeted by the program had bad safety and health programs. Following pressure from Chairman Bond and other members of the Missouri Congressional delegation, OSHA withdrew the program and offered public apologies to employers. More recently, OSHA advised employers in Missouri of a new national initiative, called the Cooperative Compliance Program. Mr. Hatfield alerted the Committee to employers' concerns

with the program, namely its close similarity to the program withdrawn in 1996. In response to this initiative, AIM and its members have met with OSHA and sought improvements to the program. As of this hearing, AIM had offered an alternate proposal to OSHA and was awaiting a response from the agency.

Two members of the Regional Fairness Boards, Scott George, General Manager, Mid America Dental, Hearing & Vision Center, and Elaine Demery, President and Chief Executive Officer, Nelson, Coulson, and Associates, Inc., testified on the status of their efforts. Despite the slow start, the Board members were glad to be a part of the process, and they indicated that change in agency attitudes and conduct toward small businesses have been noticeable. Mr. George stressed that the fear of retaliation from Federal agencies is continually cited by small businesses as a reason not to come forward and participate in the process. Chairman Bond agreed with the Board members that more needed to be done to remove this fear from chilling participation and providing an honest assessment of agencies' performance with respect to small business.

The last panel included Peter Barca, Small Business and Agricultural Ombudsman (Ombudsman), as well as representatives from the Kansas City regional offices of the EPA and OSHA. Each of the witnesses spoke of efforts being undertaken by the agencies to implement the Red Tape Reduction Act and to create a more cooperative relationship between small business and the Federal government. Mr. Barca concurred with the Fairness Board members that fear of retaliation is a recurring theme. All witnesses agreed that more needed to be done to advise small businesses of the tools provided by the Red Tape Reduction Act and to improve communication between small business and the government.

Marcia Drumm, Deputy Regional Administrator, Region VII, OSHA, noted that while OSHA has historically focused on citations and penalties, it is now reinventing itself and developing new programs with substantial input from employers and workers. For example, OSHA's consultation program is a primary vehicle for assisting small businesses. A company may receive free, confidential consultation, available upon request, without the fear of an OSHA inspector showing up at its door. Ms. Drumm also testified that OSHA reduces penalties depending on the size of the establishment, good faith of the employer, and history of previous violations. William Rice, Deputy Regional Administrator, Region VII, EPA, testified about the EPA's ongoing commitment to work with small businesses to address their special needs. He noted that the EPA has implemented programs that are intended to minimize the regulatory burden and serve as an incentive for compliance. Mr. Rice pointed out that Region VII has excellent technical assistance programs that a small business can contact without fear that the information will be passed on for possible enforcement. He also stressed that outreach is extremely important and that his Region has a wide variety of work under way to get the information out, both about existing regulations as well as identifying more cost-effective methods for complying with them.



“SMALL BUSINESS AND FUNDAMENTAL TAX LAW REFORM”—  
WASHINGTON, D.C., OCTOBER 22, 1997

On October 22, 1997, the Committee held a hearing on fundamental reform of the Federal tax law from the perspective of small business. The hearing sought to elicit the views of national small business groups on what the optimal tax system would be for small business if Congress could start from scratch. The witnesses were also asked for suggestions on meaningful steps that Congress should take to lessen the tax burden on small businesses in the short run, while Congress creates and implements a “small business friendly” tax code for the long run.

Chairman Bond prefaced the hearing by stressing that a growing problem in this country is the complexity of the tax system and the need for fundamental reform. He noted that while the IRS is in desperate need of reform and taxpayer’s rights must be strengthened, the underlying problem is that the current tax law is too complicated and burdensome on taxpayers. In fact, small businesses spend an estimated 5% of their revenues just to comply with the tax laws; that does not include the revenues required to pay their taxes. Chairman Bond stressed that the only way that the current, overly complicated tax code is going to change is if the citizens and entrepreneurs of this country call on Congress and the President to prepare, draft, and implement a better solution.

The Committee heard from a panel of seven witnesses representing small businesses across the country and in a variety of industries. In general, the witnesses agreed that the current tax law is too cumbersome simply to be “fixed,” and it should be replaced with a simpler and fairer tax system. While there was no clear consensus among the witnesses on what form the new tax system should take, Jack Faris, President and Chief Executive Officer, NFIB, urged Congress to sunset the current tax code. He suggested that Congress then craft two replacement plans—a flat tax and a national sales tax—and allow the American taxpayers to decide on the optimal system through a national referendum during the presidential election in the year 2000. Terry Neese, Past President and Corporate and Public Consultant, National Association of Women Business Owners, and Chief Executive Officer and Founder, Terry Neese Personnel Services, recommended as an alternative that Congress establish five working groups, including one representing small business, to develop a proposal for restructuring the current tax system that would be presented to Congress for consideration.

Charles E. Kruse, Member, Board of Directors, American Farm Bureau Federation, and President, Missouri Farm Bureau Federation, pointed out that the current tax code is particularly onerous for farmers and ranchers. He noted that the law taxes some income multiple times because of the individual income tax, the corporate income tax, the alternative minimum tax, the capital-gains tax, and the estate tax. Mr. Kruse stressed that whatever form a new tax system takes it must eliminate multiple taxation of the same income.

John S. Satagaj, President and General Counsel, Small Business Legislative Council, stressed that small businesses derive consider

able benefits from provisions of the current tax law, and a new tax system may require that small businesses give up some of those benefits. He emphasized that Congress should give careful consideration in reforming the tax code to ensure that small businesses do not ultimately face an even greater tax burden. Mr. Satagaj noted that the flat tax and the sales tax have their benefits but both also have significant problems. With a flat tax, individuals may be able to fill out their taxes on a postcard, but there are still going to be rules on the business side concerning what is income and what expenses can be deducted to arrive at taxable income. With a sales tax, the characterization issues may be eliminated, but small businesses will face a new set of complexities and burdens as they are forced to be the nation's tax collectors.

Karen Kerrigan, President, Small Business Survival Committee, and other witnesses offered a number of principles to guide the creation of a new tax law. Ms. Kerrigan advised that the new law should: (1) produce a low tax rate to promote economic growth, not tax capital; (2) factor in the detrimental effects of inflation; (3) be clear and simple to understand; (4) minimize the incentives for tax avoidance; and (5) limit the government's ability to increase expenditures. She also stressed that in developing a new tax law, attention must be paid to the transition rules to avoid causing individual and business taxpayers undue harm as they move to a new tax system. Ms. Neese emphasized that simplifying the tax code must focus in large part on eliminating the thresholds, phase-ins, phase-outs, limitations, differing treatment, exceptions, exemptions, exclusions, and effective dates that pervade the current law.

Two witnesses focused particular attention on the issue of payroll taxes. Todd McCracken, President, National Small Business United (NSBU), described the results of NSBU's annual survey of small business owners, which revealed that the payroll tax is the greatest burden for small businesses. He noted that payroll taxes are a fixed expense for small businesses and can be reduced only if the business fires employees or cuts their wages. Mr. McCracken also pointed out that payroll tax reform is connected with resolving the difficulties facing the Social Security system, and he asserted that the debate on fundamental tax reform must also focus on Social Security restructuring. Bennie L. Thayer, President and Chief Executive Officer, National Association for the Self-Employed, emphasized that the self-employed are especially hard hit when it comes to payroll taxes because they must pay both the employee's and the employer's share of the taxes. He also noted that self-employed individuals are the least likely to have a private retirement plan. As a result, the self-employed are the most vulnerable to proposals that would reform the Social Security system by raising taxes and cutting benefits.

The witnesses offered a number of suggestions for improving the current tax code as Congress develops a replacement tax system. Most of the panelists stressed the need for reforming the IRS to provide better service for taxpayers and the need for improving taxpayer rights. Other recommendations included accelerating the deductibility of health insurance for the self-employed, decreasing the capital-gains tax rates, expanding the estate-tax exemptions, clari-

fyng the status of independent contractors, and extending income averaging for farmers.

“IRS REFORM: WHAT AMERICA’S TAXPAYERS NEED NOW”—  
WASHINGTON, D.C., FEBRUARY 12, 1998

On February 12, 1998, the Committee held a hearing on the need to reform and restructure the IRS. The purpose of the hearing, summarized by Chairman Bond, included examination of the challenges small businesses face when dealing with the IRS and the tax laws, suggestions on ways to improve taxpayers’ rights, and observations about the impact of the IRS on the lives of women business owners. In addition, the hearing focused on ways to improve the customer service focus of the IRS.

Chairman Bond prefaced the hearing in his opening statement by commenting on the difficulties small businesses face when dealing with the IRS because they are expected to comply with the same rules and regulations as large companies. Small businesses, however, cannot afford to hire lawyers and accountants to help guide them through the regulatory process. Chairman Bond also stated his intention to introduce the “Putting the Taxpayer First Act” (S. 1669), which would provide relief for a wide range of taxpayers, from single mothers to small business owners.

All of the witnesses testified that there is a great need to restructure the IRS and improve the rights of taxpayers. Virginia Kirkpatrick, President/Owner, CVK Personnel Management & Training Specialists, shared personal testimony of the difficulties she encountered with the IRS, and stressed the importance of improving communication between taxpayers and the agency. Ms. Kirkpatrick, along with several other witnesses, noted the importance of having IRS personnel recognize that the vast majority of citizens want to pay their taxes properly and on time, and she stressed that they should be treated with respect.

Ron Morgan, Partner, Husch & Eppenger, LLC, emphasized that taxpayer clinics for low-income individuals would go a long way toward improving the current system. He recommended broadening the criteria for funding such clinics to allow them also to represent small businesses. Mr. Morgan provided the Committee with examples of the difficulties that small businesses face when being audited while trying to keep their businesses running. Mr. Morgan, along with Edith Quick, Principal, Quick Tax & Accounting Service, commended the Chairman’s proposal to allow judicial review before the IRS seizes a taxpayer’s property, noting it will ensure that the agency has followed the proper procedures.

Roger Harris, President, Padgett Business Services, commended the Committee for understanding that the proposed IRS oversight board can be effective only if it can review the examination and collection policies of the IRS. Mr. Harris recommended organizing the IRS along customer lines and providing specialized training for IRS personnel so they understand the issues relevant to specific groups of taxpayers like small businesses. He also suggested creating a separate appeal process that will work independently of the audit function, which would give taxpayers a better opportunity for a fair hearing. Jack Doll, President, Marjon, Inc., dba Hertz Rent-A-Car, provided personal testimony on the complications that arose at his

company when the IRS employees conducting the audit were not trained on the particular issues relevant to the field they were examining.

The Committee also received testimony about the impact of the IRS on the lives of women business owners. Nancy Workman, Vice President, Workman Construction Co., noted that home-based businesses, many of which are owned by women, face many tax obstacles because the IRS views them with skepticism. For example, she pointed out that many home-based business owners believe that if they claim the home-office deduction, they will most likely be audited. Ms. Workman expressed her belief that most women are very intimidated by the IRS and its collection methods. Elizabeth Nielson, CPA, President, Nelson & Associates, P.C., reiterated the belief of many witnesses that the tax system is simply too complicated and needs to be simplified. Ms. Nielson also testified that the IRS lacks in service and responsiveness to its customers and needs to be held accountable for its actions.

“ENTREPRENEURSHIP IN AMERICA: FOCUS ON THE IRS”—  
MARIETTA, GEORGIA, MARCH 2, 1998

On March 2, 1998, the Committee held a field hearing in its continuing series on “Entrepreneurship in America” dealing with the impact of the IRS on small business. The purpose of the hearing, summarized by Senator Paul Coverdell who chaired the hearing, was to focus attention on the random audit practices of the IRS and its adverse effect on small business. Senator Coverdell prefaced the hearing by discussing the “IRS Accountability Act” (S. 2008) that he introduced in 1997, which would limit the agency’s ability to undertake random audits. He expressed the hope that the hearing would make progress toward the goal of IRS reform and underscore the need for legislative changes.

Millard Choate, Chief Executive Officer, Choate Construction Company, shared personal testimony about the hardships he endured when the IRS wrongfully accused his business of tax evasion in both 1992 and 1993. For each year, he was found to have been in complete tax compliance, but his business suffered from the publicity and legal fees that he incurred with respect to the trial. He testified that he supports the collection of taxes but proposed limitations so the IRS would focus on true tax evaders. Ronald Blasi, Professor of Law, Georgia State University College of Law, testified that some low-income individuals are paying substantially more taxes than they actually owe. He suggested that the government should provide more funding for pro bono law clinics so taxpayers with limited education, skills, or financial resources can receive qualified representation in tax disputes with the IRS.

The final witness, Gerry Harkins, General Manager, Southern Pan Services Company, and Member, National Commission on Restructuring the Internal Revenue Service, testified that the vast majority of IRS employees are conscientious, hard-working, and caring individuals concerned with their jobs and the taxpayers. The problem lies in the tax code that is nearly impossible to administer. Mr. Harkins proposed reforms that would clarify the tax law and make it easier to follow. Given its complexity, he warned against over-reform by trying to micromanage the IRS.

“THE PRESIDENT’S FISCAL YEAR 1999 BUDGET REQUEST FOR  
THE SMALL BUSINESS ADMINISTRATION”—WASHINGTON, D.C.,  
MARCH 18, 1998

On March 18, 1998, the Committee held a hearing to review the President’s Fiscal Year 1999 budget request for the SBA. Chairman Bond opened the hearing by stressing that because the SBA’s budget is relatively small, each program must be examined closely to guard against unnecessarily large programs or misguided expenditures that will cause other programs to be cut out or suffer from a lack of funding. He also noted the importance of providing the SBA with the time and funding necessary to design, develop, and implement a modernized information management system for the agency.

SBA Administrator Aida Alvarez provided the Committee with an overview of the agency’s Fiscal Year 1999 budget. She discussed several areas of the proposed budget, including the growth in the General Business Loan Guarantee program, also known as the 7(a) loan program, noting that for 1999 the SBA is proposing an \$11 billion program level. This increase of roughly \$1.8 billion would be the highest level ever for the program. She also illustrated the historical pattern for the Economic Development Loan Guarantee program, also known as the 504 loan program, and noted that the new budget estimates of \$3 billion for 1998 and 1999 show significant growth over the 1997 level. The new budget also proposes to lower the fees for the 504 loan program for the second straight year.

With respect to the Women’s Business Centers, the 1999 budget would more than double their funding. With the \$9 million budget request, which is \$1 million over the current authorization, Ms. Alvarez projected that the SBA would be able to set up an additional 30 new centers, reaching the goal of establishing a Woman’s Business Center in every state. She also recognized the continuing need for government-sponsored business development and training, especially in the procurement area. The SBA requested \$9.5 million for the business training program through which the SBA provides specialized training and executive development assistance to firms in the Minority Enterprise Development program, also known as the 8(a) program. Ms. Alvarez confirmed that the agency is on track to initiate the HUBZones program, and the budget includes 31 new positions for its implementation.

The Members of the Committee raised a number of issues about the SBA’s Fiscal Year 1999 budget proposal. Chairman Bond expressed concern about his understanding that little or no carryover from Fiscal Year 1998 would be available to support the Fiscal Year 1999 SBIC program. Ms. Alvarez responded that to date the SBA expected a \$10 million carryover for next year’s budget. She indicated that the SBA is counting on using only \$972 million of the \$1.3 billion available in 1998, and that \$10 million is included in that estimate. However, she admitted that using all of the \$1.3 billion would eliminate any carryover.

Chairman Bond, along with other Committee Members, was also apprehensive about the SBA’s proposed increase in interest rates on disaster loans because the Committee has consistently declined to approve recommendations from the Administration to increase

interest rates over the years. Ms. Alvarez testified that the SBA requested \$901 million for disaster loans in 1999. She also stated that the agency's proposal to set the rates charged to borrowers at the Treasury cost of funds and to cap the rate at 6% would not increase the monthly loan payments for most borrowers because the SBA can lengthen the terms of the loan. She noted that the proposal would reduce subsidy rates from 22.36% to 5.93%. Ms. Alvarez expressed her belief that the Fiscal Year 1999 budget proposal would have less of a negative impact on the borrower than any other similar proposal offered in the past.

In response to Senator Kerry's questions regarding technical assistance and welfare-to-work initiatives, John Gray, Associate Deputy Administrator for Capital Access, noted that the SBA's goal is to get two or three different sources of funding for technical assistance and target the funding to both welfare-to-work recipients and recipients not connected with that program. Currently, the overall program funding is \$72 million, but the SBA has determined it will need an additional \$20 million if the agency is to reach a target of 23% technical assistance. He noted, however, that 14% to 20% is a reasonable level of technical assistance.

The hearing record also includes statements for the record offered by private sector witnesses as well as their responses to post-hearing questions posed by Chairman Bond. Ellen Golden, Senior Program Officer, Microenterprise and Women's Business Development, Coastal Enterprises, Inc. (CEI), provided several examples of how CEI has coordinated with the SBA and its resource partners in Maine to develop services that complement rather than duplicate those already available in the state. W. Kenneth Yancey, Jr., Executive Director, Service Corps of Retired Executives (SCORE) Association, furnished information on SCORE's efforts to coordinate with Women's Business Centers at the local level. Currently, proposals for new Women's Business Centers require that both SCORE and SBDCs act as local resource partners, and SCORE chapters and members are encouraged to use the Centers as a resource.

James L. King, President, Association of Small Business Development Centers, and State Director, New York State Small Business Development Center, noted that 36.4% of the SBDCs' clients nationwide are women, and he pointed out that SBDCs incorporate the assistance of SCORE volunteers and the services of Women's Business Centers whenever possible. He also commented on the useful and valuable purpose of the Women's Business Program of providing intensive services to women entrepreneurs. The success of the SBDC program was highlighted by a report written by James Chrisman, Ph.D., Venture Development Faculty of Management, University of Calgary, entitled "The Economic Impact of Small Business Development Center Counseling Activities in the United States: 1994-1995."

C.W. Dick, Immediate Past Chairman and Member, Board of Governors, National Association of Small Business Investment Companies, and General Partner, Pioneer Capital Corporation, Pioneer Ventures, L.P. 1, and Pioneer Ventures, L.P. 2, testified that legislation enacted to make five-year commitments available to SBICs has made a sizable improvement in the SBIC program and

one that will continue to have a major impact on the amount of private capital that will be invested in SBICs. Mr. Dick also suggested that the SBIC program level ceilings for Fiscal Years 1998, 1999, and 2000 be raised to \$1 billion for both the participating securities and debenture programs. Paula Klepper, Vice President for Congressional Relations, National Association of Development Companies, and President, Mid-Atlantic Business Finance Co., stressed that, while the 504 loan program recovery rate is expected to decline in Fiscal Year 1999 from 34.27% to 30.67%, greater effort should be put into improving loan recoveries in the 504 program. Ms. Klepper suggested that the SBA be given the authority to expand and administer the Certified Development Companies (CDC) liquidation pilot program and make it permanent. She also recommended that the SBA and CDC staffs undertake a joint effort to increase the recovery rate.

Christopher Sikes, Executive Director, Western Massachusetts Enterprise Fund (WMEF), commented on the Microloan program. He stated that WMEF does not use the Microloan guarantee pilot program, but instead finances loans with its own money to save on administrative costs and to gain a sense that the fund "owns" the loans. Mr. Sikes also recommended that technical assistance grants not be tiered so that such grants are lowered on a loan-by-loan basis as a loan matures. He stressed that microloan programs do not work on a loan-by-loan basis but on a program-wide basis.

"ENVIRONMENTAL COMPLIANCE TOOLS FOR SMALL BUSINESS"—  
WASHINGTON, D.C., APRIL 28, 1998

On April 28, 1998, the Committee held a hearing on environmental compliance tools for small businesses. The hearing included an examination of environmental compliance tools for small businesses, the effectiveness of existing compliance tools, and the experience of small businesses seeking assistance in their efforts to comply with environmental regulations. In addition, the hearing focused on environmental audits and how this tool can be used by small business owners. This hearing followed up on issues raised at the August 1997 field hearing held jointly with the House Committee on Small Business to obtain testimony from small business owners about regulatory enforcement actions.

Chairman Bond opened the hearing by noting the differences in perception of compliance assistance between small businesses and policymakers. To help clarify the meaning of compliance assistance, the Red Tape Reduction Act requires Federal agencies that regulate small companies to create and implement informal compliance assistance programs. Chairman Bond noted that the EPA has one of the most extensive programs to provide compliance assistance to the regulated community, including its small business programs. He noted that this was a "mixed blessing" because it illustrates the complexity of environmental regulations and the difficulty small businesses face in trying to comply.

All of the witnesses testified that small businesses need compliance assistance programs to comply fully with environmental regulations. The witnesses also agreed that the ultimate goal should be voluntary compliance. Benjamin Cooper, Senior Vice President, Government Affairs, Printing Industries of America, testified that

under the EPA's Small Business Assistance Program (507 program), each state that has to submit a state implementation plan must have a small business assistance program; however, not every state has implemented these programs to the extent it should. Mr. Cooper testified that this is partially due to a lack of funding, and he recommended grant programs instead of the current use of permit fees. Elizabeth Glass Geltman, Professor of Environmental Law, George Washington University, testified that because small businesses do not have as much money, manpower, or resources as large businesses to comply with environmental regulations, they must be handled differently. She noted that many states are trying alternative regulatory styles including partnerships between governments and businesses, voluntary cleanup programs, no-action letters, and pay-as-you-go advice from state agencies.

Jim King, State Director, New York State Small Business Development Center, along with other witnesses, testified that most small business owners want to obey the law but cannot always do so due to a lack of information, expertise, time, staff, and money. He also noted that Federal environmental laws and regulations are often applied differently within various regions, and small business owners are frustrated by the confusing and conflicting answers they often receive. Scott Orr, Montana House of Representatives, Vice Chair, Energy, Environment, Natural Resources and Agriculture Task Force, American Legislative Exchange Council, and President/Owner, S.J. Orr Services, Inc., expressed his belief that the EPA has accomplished the big tasks, in terms of water and air cleanup, and the remainder of its goals can be completed with half the budget and half the employees.

Mr. King testified that the SBDC program works with nearly 600,000 small businesses across the country each year, and many of those businesses do not have the employees or the staff to handle compliance issues. He noted that small business owners need quick and understandable answers to come into voluntary compliance. Mr. Cooper and other witnesses expressed their support for the SBDC program and emphasized that there could potentially be a positive role for the SBDCs to play in compliance assistance. David Marsh, Owner and Chief Executive Officer, Marsh Plating Corporation, however, expressed his belief that while the SBDCs offer hands-on assistance for new businesses in terms of planning and financial advice, they are not an appropriate source for expert compliance information.

The Committee also received testimony on environmental audits and confidentiality. Mr. King noted that business owners are afraid to go to the environmental agencies and discuss information with the regulator who may later turn around and perform an audit. He recommended a non-regulatory third party that can provide confidential environmental assistance to small businesses and allow them to reduce their pollution emissions voluntarily without the fear of possible punitive action as the result of the request for help. Mr. Marsh added his concern that because firms fear enforcement, they may not take the necessary steps to uncover violations and correct them. Mr. Cooper testified that small businesses should conduct assessments and reviews, not audits, and should be able to ask for confidential help to fix any problems they may find. Ms.



Geltman encouraged Congress to enact legislation encouraging environmental audits.

“NOMINATION OF FRED P. HOCHBERG TO BE DEPUTY  
ADMINISTRATOR OF THE SBA”—WASHINGTON, D.C., MAY 14, 1998

On May 14, 1998, the Committee held a confirmation hearing on the nomination of Fred P. Hochberg to be Deputy Administrator of the SBA. The purpose of the hearing was to review Mr. Hochberg's qualifications and to examine his views on the SBA and its role in assisting small businesses. Chairman Bond opened the hearing by reiterating the importance of the SBA Deputy Administrator position, and he noted that in 1990 the Committee voted to make it a presidential appointment subject to the advice and consent of the Senate. He stressed that, due to the major responsibilities involved in being second in charge of the SBA, a thorough review of Mr. Hochberg's credentials was necessary.

Senator Alfonse D'Amato and Representative Steve Forbes introduced Mr. Hochberg as their constituent and expressed their support for his nomination as Deputy Administrator of the SBA. They expressed the belief that his practical experience in small businesses will serve him well in this position. Aida Alvarez, SBA Administrator, testified that Mr. Hochberg's experience and his concern for small business customers will help the SBA prepare small businesses for success in the 21st century.

The Members of the Committee expressed several areas of concern about Mr. Hochberg's nomination. In response to questions regarding irregularities in his campaign contributions in 1996, Mr. Hochberg explained that certain contributions were incorrectly attributed to him by the Democratic National Committee (DNC), and that other contributions were improperly classified as soft money, causing him to exceed the Federal campaign contribution limit. He advised the Committee that the DNC has corrected its records and has transferred the relevant contributions to a soft dollar account.

Several Members of the Committee questioned Mr. Hochberg about specific SBA programs, including the recently enacted Historically Underutilized Business Zone (HUBZone) program. As a general response to the concerns raised, Mr. Hochberg testified that the HUBZone program is a “key ingredient in the arsenal of tools that the SBA has to advance the small business community, to advance jobs in depressed areas, and to ensure that small businesses get their fair share of Federal contracting.” Another area of concern to several Members of the Committee was the availability of technical assistance to help small businesses. Ranking Member Kerry noted the importance of technical expertise in the Microloan program and raised concerns over the lack of funding to provide more technical assistance. Mr. Hochberg agreed that technical assistance is an essential part of microlending, and he noted that the SBDC program is also a form of technical assistance. He reaffirmed his commitment to work with the Administrator and the Senate to increase technical assistance. Mr. Hochberg expressed his belief that the SBA can help bring the outside resources, consultants, and support small businesses need to grow and succeed.

In response to Senator Snowe's questions regarding programs to help women-owned businesses, Mr. Hochberg noted that the Ad-

ministration's Fiscal Year 1999 budget requests \$9 million so that the SBA can open a Women's Business Center in every state in the country. The money would provide specific technical assistance, guidance, and counseling to women-owned businesses. Senator Snowe also questioned Mr. Hochberg on the SBA's progress in providing assistance to small businesses to deal with the Year 2000 (Y2K) computer problem. Mr. Hochberg discussed the SBA's website, which provides information on Y2K and how to deal with the problem, and he stated that the SBA is committed to making sure small businesses in every community are aware of the problem before the year 2000 so they have time to make the necessary changes.

At the conclusion of the hearing, the Committee unanimously voted to recommend that the Senate confirm Mr. Hochberg as Deputy Administrator of the SBA.

“E-COMMERCE AND Y2K: WHAT'S AHEAD FOR SMALL BUSINESS?”—  
WASHINGTON, D.C., JUNE 2, 1998

On June 2, 1998, the Committee held a hearing on two related issues—the expansion of the use of electronic commerce (e-commerce) among small businesses and the potential effects of the Year 2000 (Y2K) problem on small businesses. The purpose of the hearing, summarized by Chairman Bond, was to examine the dependence of small businesses on e-commerce and how the evolution of e-commerce is likely to affect small businesses. Moreover, the hearing examined the challenges small businesses may face on January 1, 2000, from the Y2K problem, when many computers will interpret the date “1/1/00” as January 1, 1900, due to a programming error in older software. The hearing also focused on the role that the Federal government should play in solving the Y2K problem and evaluated the efforts of the SBA to raise awareness among small businesses about the potential problems that may occur.

Chairman Bond opened the hearing by emphasizing the important role that small businesses play in our economy—99% of all businesses in the United States are small, and over 50% of all workers are employed by small businesses. Chairman Bond addressed the growing role of e-commerce among small business operations, observing that many small businesses use e-commerce to generate demand for their products and services, fulfill and manage orders, simplify payment, and supply ongoing product support. Chairman Bond then addressed the Y2K problem and its likely effect on small businesses. Y2K awareness has been slow; many small businesses do not realize they may have a problem. Originally the SBA thought Y2K would not be a problem for small businesses. The agency, however, recently revised its position and has set up a Y2K website and started an awareness campaign about the Y2K problem for small enterprises. Chairman Bond expressed his concern about a recent Wall Street Journal article, which states that 40% of small businesses say they have no plans to do anything about the possibility of computer glitches resulting from the century date change.

Several witnesses testified as to the great opportunities for small businesses to compete and expand through e-commerce. James

Yasso, Vice President of Intel Architecture Business Group, and General Manager, Reseller Products Division, Intel Corporation, stressed that high performance personal computers, in conjunction with the Internet will put small businesses on equal ground with big businesses by increasing efficiency and improving competitiveness. Mr. Yasso noted, however, that the computer industry must develop products and services that are designed for small business and that will simplify the installation and use of connected computers and the Internet, as over two-thirds of small business owners believe they lack the expertise to use existing technology effectively. Tom Luedtke, Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration (NASA), testified that one of NASA's main goals is to make e-commerce easier for small businesses that do business with that agency, especially businesses that have not traditionally done business with the Federal government. The cornerstone of the agency's program is the NASA Acquisition Internet Service, a web-based service that provides immediate access to advance procurement notices, solicitations, backup information, regulations, and other policy information.

While e-commerce and the Internet can help small businesses expand and compete, the Committee learned that the Y2K problem can prove disastrous to those companies that do not update their computers. Harris Miller, President, Information Technology Association of America, testified that the companies most at risk are small and medium companies, many of whom believe that they are immune to the problem, or that it has already been fixed. Unfortunately, this is not the case, and those companies that ignore the problem risk losing their businesses as a result of this computer anomaly. To combat this problem, Mr. Miller suggested that the SBA go beyond its current efforts and launch a national public service advertising campaign, educating both businesses and consumers. He also suggested that the SBA offer incentives and assistance, such as low interest loans to small businesses to fix their Y2K problems, and that the Federal government should lead by example and fix its own Y2K problems.

David Eddy, President, Software Sales Group, Inc., acknowledged the tremendous reluctance to tackle this "unplanned, unbudgeted, and unwanted" problem. Mr. Eddy agreed with Mr. Miller's suggestions and recommended a massive national educational and training curriculum to train teams with the skills to help a small business in each aspect of Y2K compliance—from assessing a problem to reporting on its progress.

David Schaefer, Vice President, Armfield, Harrison & Thomas, Inc., provided the Committee with the perspective of a small business owner, a property and casualty insurance agent and a risk management advisor for small- and medium-sized businesses. Mr. Schaefer offered personal testimony about the amount of preparation and expense his own agency has endured to prepare for Y2K, and he expressed grave concerns about the state of American businesses with respect to the Y2K issue. Mr. Schaefer noted that, while a company may update its own systems, many external risks can affect them as well as liability factors. He was very concerned that existing indifference and general ignorance about the extent

of the problem will make the situation much worse for our economy.

“OVERSIGHT OF THE SMALL BUSINESS INNOVATION RESEARCH  
(SBIR) PROGRAM”—WASHINGTON, D.C., JUNE 4, 1998

On June 4, 1998, the Committee held a hearing on the Small Business Innovation Research (SBIR) program. The hearing examined the strengths and weaknesses of the SBIR program, which requires Federal agencies with extramural research and development (R&D) budgets of \$100 million or more to set aside no less than 2.5% of that amount for small businesses. The SBIR program is divided into three phases. Phase I is designed to determine the scientific and technical merit and feasibility of a proposed research idea, with funding for individual Phase I awards limited to \$100,000. Phase II considers the idea's commercialization potential, with individual awards up to \$750,000. Finally, Phase III entails the use of non-Federal funds for commercial application of the technology or non-SBIR funds for continued R&D under government contracts.

Chairman Bond opened the hearing by noting the accomplishments of the SBIR program since its inception in 1982. He observed that when the program began only 0.2% of the covered agencies' R&D budgets were set aside for SBIR awards, and by 1992 that percentage had increased to 2.5%, which allowed the number of small businesses participating in the program to multiply. Chairman Bond noted a study by the GAO indicating that only one-third of the states receive 85% of the SBIR awards. States such as Missouri, Montana, Idaho, Maine, and others received 11 or fewer awards in Fiscal Year 1996, while California and Massachusetts received 628 awards or more. Chris Busch, Ph.D., SBIR Consultant, agreed with Chairman Bond's concerns and asserted that many rural states are the ones with the fewest awards, only two out of every 100 submitted. He recommended that the SBIR program become more aggressive and take action to help small businesses overcome these barriers.

All of the witnesses testified that the SBIR program was a great asset to small businesses and that the program should be continued. The witnesses also agreed that the ultimate goal of the program was to involve more small businesses and thereby expand the program. While highlighting the success of the program, the witnesses also noted several areas for improvement. Charles W. Wessner, Ph.D., Program Director, Board on Science, Technology, and Economic Policy, National Research Council, proposed that the process for awarding Phase II grants needs to be accelerated. He pointed out the commercially useful time horizon of an idea may be shorter than the time it takes for an SBIR application to be processed. Robin Frank Risser, Vice Chairman, Small Business Technology Coalition, and Co-Founder and Chief Executive Officer, Picometrix, Inc., testified that significant delays, between the time proposals are submitted and the time contracts are awarded, can harm both the proposing company and the project.

Susan D. Kladiva, Associate Director, Energy, Resources and Science Issues, Resources, Community, and Economic Development Division, GAO, pointed out that some agencies are using different

interpretations of the extramural budget definition, which may lead to incorrect calculations of their extramural research budgets. She recommended that the SBA provide additional guidance to participating agencies on how to calculate their extramural budgets. Arthur P. Brigham, III, Chairman of the Board, High Performance Materials, Inc., dba HPM, Inc., urged the Committee to consider greater absolute funding, which is currently capped at 2.5% of the external R&D budget. Mr. Brigham stated that if both internal and external funds are considered, 2.5% is a very small portion of an agency's overall R&D budget. He also suggested that contract limits be expanded to \$150,000 in Phase I and \$1.25 million in Phase II, and he recommended that the set-aside percentage be increased significantly above the existing 2.5%. In addition, he stressed that these percentages should be adjusted for inflation.

“ENTREPRENEURSHIP IN AMERICA: EXPANSION OF MICROLENDING”—  
BOSTON, MASSACHUSETTS, JULY 13, 1998

On July 13, 1998, the Committee held a hearing in its series on “Entrepreneurship in America,” in Boston, Massachusetts. The hearing, chaired by Senator John Kerry, the Committee's Ranking Member, examined the microlending program and its effect on small businesses. Senator Kerry emphasized the strengths of the SBA's microlending program on small companies, noting that since its inception in 1992, more than 7,000 microloans have been extended to entrepreneurs, with the majority going to women and minorities. Ranking Member Kerry acknowledged weaknesses in the program, and he pointed out that the program is currently offered only in certain areas, with a handful of states having no SBA microlending programs. He concluded that the microlending program was a valuable asset to small businesses, and it should be expanded to cover every state.

All of the witnesses testified that the microlending program provides critical assistance for many small businesses. Some witnesses, however, expressed frustrations with the program. John Gray, Associate Deputy Administrator for Capital Access, SBA, noted that one of the biggest frustrations with the program is the lack of technical assistance. The program consists of only 35 intermediaries and two non-lending technical assistance providers. He indicated that the low number of intermediaries is directly correlated to the small number of technical assistance programs. Mr. Gray also demonstrated that the number of microlending programs has decreased since its height in 1995.

David F. Westgate, President, Fall River Office of Economic Development, and President, South Eastern Economic Development Corporation (SEED), emphasized that the real need for microloans and technical assistance is to increase small business growth and development. The SEED program has assisted 30 new and expanding microloan enterprise businesses in the South Eastern community. He stated that one major problem was the lack of technical assistance not only in the South Eastern community but everywhere microloans are distributed. Christopher Sikes, Executive Director, Western Massachusetts Enterprise Fund, and Board Member, Association for Enterprise Opportunity, stressed the need for technical assistance and noted an acute awareness of the impact of

any reduction in technical assistance below the 20% level. He recommended that the percentage be moved to 25% for more support. Mr. Sikes stressed that, due to their highly technical and highly competitive nature, many businesses need to be extremely savvy, which puts a premium on the availability of technical assistance.

James C. Kaddaras, Executive Director, Working Capital Inc., provided the Committee with anecdotal information about the Microloan program and small businesses. His company provides customers, many of whom have no other source of capital, with credit, education, and training. Mr. Kaddaras stressed a real need for technical assistance to ensure that every business has a chance to succeed.

Eugene Severens, Director, Nebraska Microenterprise Partnership Fund, raised the idea of state intermediaries to assist business owners better. He urged the Committee to consider having the SBA provide lending capital and technical assistance grants for state-level intermediaries, asserting that such assistance will result in more comprehensive geographic coverage. Mr. Severens stated that state-level intermediaries not only further the SBA's objective of serving entire states but also insure a higher level of performance and accountability. Joseph Kriesberg, Deputy Director, Massachusetts Association of Community Development Corporations, and Chair, Public Policy Committee, Massachusetts Micro Enterprise Coalition, agreed with the state intermediaries recommendation. He testified that state intermediaries could allow for some standardization and consistency across the field but not in a rigid "one size fits all" way. He asserted that having state intermediaries would allow microlending to reach more people and reach deeper into the communities, which would provide all entrepreneurs with better service.

**"HOME-HEALTH CARE: CAN SMALL AGENCIES SURVIVE NEW REGULATIONS?"—WASHINGTON, D.C., JULY 15, 1998**

On July 15, 1998, the Committee held a hearing on new regulations promulgated by HCFA on the home-health care industry. The purpose of the hearing, as summarized in Chairman Bond's opening statement, was to examine the impact of the Interim Payment System (IPS) and the surety bond regulations on small home-health care businesses and to elicit suggestions for ways to improve the regulations. In addition, the hearing explored whether HCFA had followed the requirements under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act in developing the new regulations.

In his opening statement, Chairman Bond noted that according to HCFA's own data, 85% of home-health agencies are small businesses. While he expressed his support for rooting out fraud and abuse in the Medicare and Medicaid programs, he emphasized that HCFA's IPS and surety-bond regulations are driving honest, ethical, high integrity, quality providers out of business. Chairman Bond stated that, in his view, HCFA's surety-bond rule goes far beyond the intent of Congress and that HCFA is seeking to use surety bonds to insure against overpayments rather than prevent fraud and abuse. He also noted that Medicare's and Medicaid's cost-reimbursement systems should not force small businesses to

subsidize the cost of their patients' care. Chairman Bond advised the Committee that, due to the Senate's intervention, HCFA had agreed to suspend the deadline for home-health agencies to comply with the surety-bond requirement and to revisit this rulemaking.

All of the witnesses testified that HCFA's new regulations are having devastating effects on small home-health care providers all over the country and that something must be done before more businesses close their doors. Carole Burkemper, R.N., B.S.N., Chief Executive Officer, Great Rivers Home Care, Inc., testified that funding to agencies like hers has been reduced by 31% to 81% below the actual cost of providing care. She stressed that, due to these drastic IPS funding cuts, many elderly people are being denied reasonable and necessary home care. Ms. Burkemper stated that prior to the IPS, Great Rivers Home Care consistently operated at nearly \$1 million below its cost limits, but under the IPS the agency will be reimbursed \$1.5 to \$1.8 million less than the actual cost of providing care. Delia Young, President, Delia Young & Associates Healthcare Consultants, praised Congress for attempting to abolish waste and fraud in the Medicare system, particularly as it is administered through home-health agencies. She testified, however, that HCFA has overstepped its boundaries and is placing the future of the home-health care industry in danger. Ms. Young voiced her belief that home-health care and teaching prevention techniques has been extremely effective, especially in rural and urban inner cities.

Lynn Hardy, R.N., Executive Director, Duplin Home Health Care & Hospice, provided the Committee with anecdotal evidence of the burdens that the new regulations have placed on home-health care agencies. Due to the implementation of IPS, patients have to be assigned a priority to ensure that resources can be matched with needs, thus rationing care. Ms. Hardy explained that current reimbursement for Medicare home-health services is based upon the lower of cost or charges at or below the Medicare cost cap limit or a per beneficiary cap limit. She recommended splitting the beneficiary limit into two components or blending the cap computation. Ms. Hardy also stressed the need for legislation that will ensure access to care for the beneficiary that requires skilled care on an ongoing basis. Bonnie Matthews, Vice President, Post Acute Services, South Shore Hospital System, requested that Congress pass reform legislation that provides fair and equitable reimbursement to the home-health care industry. She noted that Medicare currently does not reimburse for pre-filling prescriptions, monitoring chronic illnesses, or for personal care services by a home-health aide unless a skilled service, such as nursing, is associated with the care.

Bob Reynolds, Resident Agent, Medicare Surety, Franey & Parr, spoke on behalf of the National Association of Surety Bond Producers, and expressed concerns about the surety bond requirement for home-health agencies participating in the Medicare and Medicaid programs. Mr. Reynolds explained that a home-health agency has difficulty obtaining the surety bond currently required by HCFA because it is basically a financial guaranty bond that will cover the overpayments that HCFA often makes to home-health agencies. HCFA does not allow these agencies to make a profit, and they usually cannot acquire a significant amount of net worth with

little or no business outside the Medicare and Medicaid programs. He stressed that insurance companies do not want to risk losing money by writing financial guaranty bonds to agencies operating at cost or even at a loss. Mr. Reynolds suggested that Congress intended for HCFA to issue an anti-fraud bond that would cover financial losses to the Medicare and Medicaid programs resulting from the dishonest activities of a home-health care agency.

Jere W. Glover, Chief Counsel for Advocacy, Small Business Administration, expressed the SBA's concerns that HCFA did not follow the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. He testified that the agency failed to study the impact that the regulations would have on small businesses, and he noted that in his four years as Chief Counsel for Advocacy, HCFA's regulations have had the most detrimental impact on small businesses to date, as defined by the number of businesses that have closed their doors. The SBA hopes this hearing will send a strong message to HCFA that the agency must comply with the law and realize the devastating impact its regulations are having on small businesses across the country.

“CAN SMALL BUSINESS COMPETE WITH CAMPUS BOOKSTORES?”—  
WASHINGTON, D.C., SEPTEMBER 24, 1998

On September 24, 1998, the Committee held a hearing on unfair competition by campus bookstores operated by tax-exempt educational institutions. Senator Lauch Faircloth, who presided over the hearing, noted real problems with campus bookstores having a monopoly over off-campus businesses. He stressed the need for a more competitive environment and described a bill (S. 2490) he introduced to address this problem by prohibiting Federal aid from being received by colleges that directly or indirectly discriminate against off-campus businesses.

All of the witnesses testified that a monopoly against off-campus businesses exists and each emphasized the need for change. The witnesses also agreed that those paying the greatest price for this monopoly are the students and their parents. Graham Gillette, President, Pinnacle Communications, LLC, testified that off-campus retailers are denied access to freshman mailing lists because colleges and universities consider them confidential information. These lists, however, enable on-campus stores to advertise and build customer loyalty before students realize that there is an alternative. He also testified that universities such as Iowa State are implementing university debit-card programs for students to purchase their books, but only at on-campus stores. He warned that programs like this one could virtually eliminate any off-campus competition. Anthony Samu, President, United States Student Association, agreed that the debit-card program available on some campuses harms small business.

William D. Gray, President, Gray's College Bookstore, and National Chairman, Campus Area Small Business Alliance, expressed strong support for S. 2490. He added that the bill should also cover all campus business enterprises such as restaurants, laundries, and bookstores. He concluded that the legislation will put an end to favoring on-campus over off-campus bookstores. Rob Karr, Vice President, Government and Members Relations, Illinois Retail Mer-



chants Association, emphasized the need for this legislation and testified that Illinois has already begun to implement amendments to dissuade universities from their anti-competitive practices. He also observed that the school debit-card program truly hindered off-campus businesses by barring them from participation.

